

PARLIAMENT  
Bridgetown, Barbados



**REPORT**

**OF THE**

**JOINT SELECT COMMITTEE**

**(STANDING)**

**ON**

**SOCIAL SECTOR**

**AND THE ENVIRONMENT**

**ON THE**

**CHILD PROTECTION BILL, 2023**

**AND THE**

**CHILD JUSTICE BILL, 2023**



**REPORT  
OF THE  
JOINT SELECT COMMITTEE (STANDING)  
ON  
SOCIAL SECTOR AND THE ENVIRONMENT  
ON THE  
CHILD PROTECTION BILL, 2023  
AND THE  
CHILD JUSTICE BILL, 2023**

1. On Tuesday, May 2<sup>nd</sup>, 2023 the Honourable The House of Assembly and on Wednesday, May 17<sup>th</sup>, 2023 the Honourable The Senate constituted a Joint Select Committee (Standing) respectively on Social Sector and the Environment (**hereafter referred to as “the Committee”**).

2. The Committee’s membership is as follows:

Ms. Toni N. S.-A. Moore, J.P., M.P. (Chairman)

Miss Cynthia Y. Forde, J.P., M.P. (*now ‘Her Honour’*)

Mr. Trevor A. Prescod, J.P., M.P.

Hon. Corey A. Lane, J.P., M.P.

Senator John A. King (Deputy Chairman)

Senator Rev. Canon Dr. John A. Rogers, D.Th

Senator Dr. the Hon. Chelston W. Dac. Brathwaite, CHB, PhD

3. On Tuesday, May 23<sup>rd</sup>, 2023 the Honourable The House of Assembly referred the following Bills to the Committee to deliberate and report on: -

The Child Protection Bill, 2023b

A Bill to: -

- (a) make provision for children in need of care and protection.

And

The Child Justice Bill, 2023

A Bill to: -

- (a) reform of the criminal law applicable to children; and
- (b) repeal the
  - (i) *Juvenile Offenders Act, Cap. 138*; and
  - (ii) *Reformatory and Industrial Schools Act, Cap. 169*.

4. The Terms of Reference of the Bills before the Committee were as follows: -

1. To enquire into and determine whether the Bills as drafted fulfil the expressed purposes to ensure compliance with the United Nations Convention on the Rights of the Child, the Universal Declaration of Human Rights, and all other international instruments to which Barbados is a signatory.

2. To examine the United Nations Standard Minimum Rules for the Administration of Juvenile Justice; the United Nations Rules for the Protection of Juveniles Deprived of their Liberty and the United Nations Guidelines for the Prevention of Juvenile Delinquency.

3. To examine and analyse whether the provisions of the Bills relate to the promotion of the safety and welfare of the child; the provision of care and protection of a child from abuse and neglect.

4. To enquire whether the best interest of the child is paramount and given the utmost importance within the provisions of the Bills.

5. To examine whether the reform of the criminal law addresses all the concerns relating to the children in all matters.



6. To consider whether the Bills as drafted will be effective in the care and protection of the child and act as a strong deterrent against a child committing an offence.

7. To examine and analyse whether the provisions of the Bills as drafted:

- 1) Child Protection Bill, 2023 – adequately provides for the establishment of the Child Protection Authority to engender the care and protection, services and promotes the development, adoption and evaluation of policies and procedures which are within its powers and duties; and
- 2) Child Justice Bill, 2023 – whether the assessment of a child and the initial inquiry, court proceedings and sentencing will upon effective implementation contribute to positive changes within the society.

8. To examine whether the Bills as drafted offer effective enforcement procedures to ensure compliance with the provisions of the Bills.

9. To make recommended changes, if deemed necessary, to the Bills as drafted for further consideration by the Chief Parliamentary Counsel.

5. The Committee has the honour to report as follows:

The Committee scheduled and held meetings on the following dates:

- (i) Thursday, July 27<sup>th</sup>, 2023 (Preliminary);
- (ii) Friday, August 25<sup>th</sup>, 2023;
- (iii) Friday, September 8<sup>th</sup>, 2023;
- (iv) Friday, September 15<sup>th</sup>, 2023;
- (v) Tuesday, September 19<sup>th</sup>, 2023;
- (vi) Tuesday, October 3<sup>rd</sup>, 2023;
- (vii) Friday, October 6<sup>th</sup>, 2023;
- (viii) Friday, February 16<sup>th</sup>, 2024; and
- (ix) Tuesday, February 20<sup>th</sup>, 2024.

The Minutes of the meetings are appended hereto and marked ‘**A1 to A9**’ respectively and form part of this report.

All the meetings were held at the Parliament Buildings, Bridgetown.

A copy of the Child Protection Bill, 2023 and the Child Justice Bill, 2023 which are appended hereto and marked “**B1**” and “**B2**” are available online and on Parliament’s website and the Government Printing Department’s website. Explanatory memoranda for the Bills are attached as “**B1a**” and “**B2a**” appropriately.

The Committee in keeping with its parliamentary practice issued a Press Release inviting and encouraging the public whether as individuals, professional organisations, community-based groups, official and unofficial bodies with special interest and generally anyone who may assist with its work to submit memoranda or other documents setting out their views and comments on the issues.

The Committee invited submissions from the following organisations and persons:

- Anglican Diocese of Barbados
- Barbados Association of Medical Practitioners
- Barbados Association of Professional Social Workers
- Barbados Bar Association (BBA)
- The Barbados Christian Council (BXC)
- Barbados Council for the Disabled (BCD)
- Barbados National Council of PTA’s
- Barbados National Youth Parliament
- Barbados Union of Teachers (BUT)
- Chief Education Officer
- Chief Probation Officer
- Child Care Board (CCB)
- Commissioner of Police

- Community Development Department
- Community Policing Department
- Democratic Labour Party
- Government Industrial Schools
- Juvenile Liaison Scheme
- Ministry of Home Affairs and Information
- Ministry of Labour, Social Security & the Third Sector
- Ministry of People Empowerment and Elder Affairs
- National Council of Substance Abuse
- National Organisation of Women
- PAREDOS
- Pentecostal Association of the West Indies
- Roman Catholic Diocese of Barbados
- The Derrick Smith School and Vocation Centre
- UNICEF Office for the Eastern Caribbean Area

The Committee decided that written submissions should reach the office of the Clerk of Parliament no later than Friday, August 18<sup>th</sup>, 2023. Subsequently, an extension of the deadline was extended to Friday, August 25<sup>th</sup>, 2023.

The Committee initially decided that the oral presentations should be ten (10) minutes in length followed up with a five (5) minutes question and answer period. Subsequently, it was decided that each presenter would present for fifteen (15) minutes followed by a thirty (30) minute question and answer session. If there was need for the extension of a session a motion would be moved by a member to have the time extended by fifteen (15) minutes. Further, one-hour blocks were provided to separate each presenter.

Technical Support was provided by Ms. Shawn R. Belle, Chief Parliamentary Counsel (Ag.) who initially introduced the Explanatory Memoranda and explained the Parts, Clauses and

Schedules of the Child Protection Bill, 2023 (CPB) and the Child Justice Bill, 2023 (CJB) respectively.

## **WRITTEN SUBMISSIONS**

Written Submissions were received from the following organisations/persons:

1. Mr. Hutson Inniss, Executive Director, Family-Faith-Freedom Barbados
2. Mr. Vincent Smith
3. Ms. Norma Springer
4. Operation Safe Space – Mrs. Marsha Hinds-Myrie and Ms. Anya Lorde
5. Mr. Kammie “Mac” Holder – Fathers 4 Justice Barbados
6. Mr. Victor Hoppin (2 submissions)
7. Chief Probation Officer (Ag.), Probation Department
8. Dr. Veronica C. Evelyn, PhD Consultant Sociologist
9. Barbados Council for the Disabled (BCD) (2 submissions)
10. Mr. Junior Campbell, Intelek International, UK
11. Ms. Roseann Richards, Director, Child Care Board
12. Barbados Bar Association (BBA)
13. Democratic Labour Party (DLP)

The written submissions are appended hereto and marked “C1 -- C13” and form part of this report.

The Committee began its deliberations on the following written submissions:

**1. Mr. Hutson Inniss, Executive Director - Family-Faith-Freedom, Barbados (FFFB)**  
*(Transcript follows)*

One of the main concerns of Family-Faith-Freedom Barbados was the similarities with “Purpose” under Clause 3(1)(a) and Clause 3 in the CPB and CJB, respectively. They believed that both legislations were drafted with a view to ensuring compliance with the provisions of the Conventions referred to therein. As such, the concepts of sexual orientation and gender identity may be incorporated into Barbados. They proposed that those provisions be removed as a precautionary measure because the inclusion thereof would commit the country to norms which may change to its detriment and beyond its control.

The Committee agreed not to amend the Bills and therefore Clause 3 of the Bills should not be removed. FFFB’s request to make a ten (10) minute oral presentation was granted by the Committee so that the members could examine its submission further.

**2. Mr. Vincent Smith** *(Transcript follows)*

Mr. Vincent Smith’s submission was mainly focused on the CPB. The basis of his submission was that “Gender Affirming Care is medical abuse” and proposed that it should not be administered to a person under 18 years of age and its prohibition be included in the Bill. His reasoning was that children were being led down a path of gender confusion and identity crisis which is exploited and monetised by medical professionals.

To dispel this notion, the policy of “Child in need of care of protection” as set out in Clause 5 was relied on and formed the basis to address his concern of medical treatment and by extension care and responsibility.

There was a lack of understanding in relation to the nature of the medical treatment within the legislation but it was understood by the Committee that assignment surgery would not fit into the circumstances as provided by the Bill.

The general consensus was that the legislation did not purport to address Mr. Smith's concerns.

**3. Ms. Norma Springer** *(Transcript follows)*

Ms. Norma Springer's submission addressed her concerns with respect to the different definitions of the child and the age of majority within the CJB and CPB respectively. She highlighted that the CJB has the age of criminal responsibility at 12 years and 1 day; and the CPB has special clauses for a child under age 12.

It was noted that there was some misunderstanding by Ms. Springer of the difference of ages between the two Bills. However, despite the different ages or definitions to treat to the age of the child, it was agreed that there is no real conflict between the two Bills as they both provide and define that a child is a person under the age of 18 years.

**4. Operation Safe Space (OSS) – Mrs. Marsha Hinds-Myrie and Ms. Anya Lorde**  
*(Transcript follows)*

It must be noted that OSS was generally satisfied with the provisions of both Bills and they offered up two major concerns relative to Bureaucracy and Resources. The Committee felt that their submissions were operational problems and social ills within the society and pointed out that social ills could not be cured by legislation.

It was concluded that OSS's submissions did not request any amendments to the legislations but the Committee took note and embraced the comments therein.

**5. Mr. Kammie “Mac” Holder – Fathers 4 Justice Barbados** *(Transcript follows)*

Mr. Kammie Holder’s submission to the Committee was grounded on ten (10) Articles of the United Nations Convention on the Rights of the Child.

It was agreed by the Committee that Mr. Holder’s submissions warranted no amendments to the CPB or the CJB.

**6. Mr. Victor Hoppin (2 submissions)** *(Transcript follows)*

In Mr. Victor Hoppin’s first submission he was concerned with the way in which the CPB and the CJB addresses the time frame of three (3) months and six (6) months when treating to the serious problems within the ‘family’ context. It was noted that the said timelines were in line with the international norms that are supposed to be applied in such cases and are seen as being in the best interest of the child.

In his second submission, he constructively criticised the policy of Diversion within the context of the criminal justice system as articulated in the CJB. His view was that once the young offender goes before the Magistrate and thereafter, it will be determined whether the matter would be dealt with by the Board. He stated that this process was not diversion but purely a deviation from the Magistrates’ Courts and proposed that “*A true policy of diversion will see an appearance being made first before the Board*”. This issue was keenly ventilated among the members of the Committee and it was explained by Ms. Shawn R. Belle that pursuant to Clause 24 (2): “The appearance of a child at an initial inquiry before a magistrate shall be the equivalent of a first appearance before a Court.” As such, this would not be regarded as court procedure *per se* and based on the provisions, it is generally a problem-solving type of mechanism within informal proceedings.

With respect to the issue raised regarding the language of Clause 38(1)(b), it was queried why the notice is not written to the child and his parents or the child and the appropriate authority. It was agreed that the language should be modified so that it is clearer as to the

responsibilities with the inclusion of references to confer back to earlier provisions in connection with Diversion.

In conclusion, the Committee agreed that the parent Ministry should consider that there may be some validity in examining another model to effect the mechanism of Diversion.

**7. Chief Probation Officer (Ag.), Probation Department** *(Transcript follows)*

The Probation Department as one of the key stakeholder agencies submitted to the Committee that they did not have any challenges and supported the composition of both the CPB and the CJB.

**8. Dr. Veronica C. Evelyn, PhD, Consultant Sociologist** *(Transcript follows)*

Dr. Veronica C. Evelyn's submission was with regard to the CPB. She was mainly concerned with 1.) The purpose of the Bill; 2.) The language of the Bill; and 3.) The lack of definition of important concepts.

The Committee began to examine her three (3) areas of concern as mentioned above. The concerns raised were not misplaced, however it was felt that there was evidence of lack of research. Many questions were asked by the Committee members and it was agreed that Ms. Evelyn's submission be deferred until she appeared before the Committee to make an oral presentation.

**9. Barbados Council for the Disabled (BCD) (2 submissions)** *(Transcripts follows)*

BCD's first submission reviewed the CPB and the CJB and submitted that the inclusion of children with disabilities was succinctly incorporated. However, they recommended that *"the final documents be more inclusive by being more contextual, e.g., adding the words "children with disabilities" wherever examples of service to recipients are provided in the Bills."*



The Committee agreed that a letter be written to the BCD querying specifically where they would want to see the expansion or the inclusion relative to “*children with disabilities*” within both Bills.

After the letter was written by the office of the Clerk of Parliament, BCD’s further recommendation in their second submission was that wherever possible the word “*child*” is identified in the CPB and CJB; and that it would mean “*includes/including child with a disability*”. The Committee at its Fifth Meeting on Tuesday, 3<sup>rd</sup> October, 2023 agreed that the Regulations for both Bills should further expand on this subject matter.

**10. Mr. Junior Campbell, Inteltek International, UK** *(Transcript follows)*

Notwithstanding the concerns raised by Mr. Junior Campbell in his written submission in relation to the CPB and the CJB the Committee agreed that they were not pertinent to the two Bills.

At this stage, the Committee concluded its deliberations on the written submissions.

The Committee began its deliberations on the following oral presentations which were lived streamed:

**1. Dr. Veronica C. Evelyn, Consultant Sociologist** *(Transcript follows)*

Dr. Veronica C. Evelyn, Consultant Sociologist was accompanied by Mrs. Jennifer Edwards.

Dr. Evelyn who has worked as a Consultant Sociologist for the past nineteen (19) years addressed the Committee in relation to the CPB. She posited that there was definitely a need to update and reform laws pertaining to the care and protection of children. However, she submitted that the legislation was unacceptable in its present form.

Dr. Evelyn’s concerns raised during her presentation were basically in relation to the concept of sexual orientation and gender identity of Barbados’ children. She strongly advised

that Barbados act out of an abundance of caution in relation to embracing the concept of sexual orientation as expressed in the Charter of Barbados 2021 which she believed is now being considered for inclusion in the new Constitution.

Further, she *“urged the relevant authorities to revisit the Child Protection Bill; reconceptualise its purpose; review and revise language, so that the provisions of the Bill are consistent with an informed well-reasoned national stance on sexual orientation.”*

Madam Chairman opposed her submission and stated that:

*“What is clear, from your submission is that there is a definite concern of yours that the Committee recognises is a concern that ought to be examined. The Bill before us in terms of its title; what it seeks to address; does not contemplate the handling of the issues to the extent that you have articulated them.”*

Madam Chairman reiterated that the explanation of the Government’s policy by CPC was very clear more particularly Clause 3(2) along with Clause 5 and that the concerns of gender assignment or sexual orientation in the way that they were expressed by Dr. Evelyn *“will not be provided for; nor will not be allowed within the Bill as it is outlined.”*

In conclusion, the Committee agreed that her concerns were not really concerns that were reflected in the CPB because it does not speak to it in the way that she had articulated. The Bill does not allow the State to assign gender or the State to make determinations on sexual orientation.

**2. Child Care Board (CCB) Team: (Transcript follows)**

Ms. Roseann Richards, Director

Mr. Colin St. Hill, Deputy Director

Ms. Roxanne Sanderson, Senior Child Care Officer

Mrs. Carla Haynes, Senior Child Care Officer

Ms. Ngina Dyal, Child Care Officer

It must be noted that the CCB has played an integral role in the process to the development of the Draft CPB.

Ms. Roseann Richards, Director, after the formal introduction of her team made various recommendations and concerns relative to the CPB. With regard to the said recommendations, it was agreed that changing the term "*Child Care Centre*" to "*Child Protection Facilities*" throughout the Bill should be possible once approval was given by the parent Ministry.

Ms. Shawn R. Belle after consultation with the parent Ministry reported to the Committee that the proposed change in the aforementioned term would constitute a conflict with regard to the likely retention of "Child Daycare Centres" for children aged 0 – 3. This term accommodates both above concepts and was preferred by the parent Ministry.

In relation to the word "*desertion*" as set out in Clause 5(e) it was recommended that a timeframe be included but the Committee flagged this as a policy issue and was directed to the parent Ministry.

Ms. Shawn R. Belle after consultation with the parent Ministry reported to the Committee and it was agreed that the recommended timeframe was best left to the Court/Judiciary to determine the appropriate length of time for the desertion to be adjudged as such.

The word "*moral*" in Clause 5(f) was recommended to be deleted which was agreed to by the Committee.

As regards CCB's concern relative to the words "*does not, or refuses to, obtain treatment; or*" as provided by Clause 5(h)(i). If a child was hospitalized; they needed clarity on the responsibility of the Queen Elizabeth Hospital and the CCB. The response was:

*"It is supposed to give the context in which the intervention of the State is to be made, so that the intervention of the State is articulated by talking about care and protection and what it is supposed be defined as. Clause 5 (1), a child is in need of care and protection where and then it states the situations where their intervention would be necessary. All*

*the actors including the Director would need to make a determination in terms of the role they will play in assessing the suffering from a mental, emotional, physical condition.”*

In relation to the above, Ms. Shawn R. Belle reported that the parent Ministry believed that there was no rational basis for seeking to require approval from a third actor. Such an inclusion “would further exacerbate the child’s condition and negate the State’s attempt to care for such an at risk child.” The Committee agreed.

The Committee extensively discussed the issue of the language of Clause 31(1) based on CCB’s recommendation that the word “may” should be replaced with the word “shall”: “*the Director may, if necessary with the assistance of a police officer, ...*” The Hon. Kirk D. M. Humphrey clarified the issue and put it into proper context thus:

*“The discussion we had was exactly that and it came down to, in the absence of a police officer, can the Board act or not? There are two things: If we are saying that they can only act if the officer is present, it would mean that in the absence of a police officer they cannot remove a child, even if the child is in immediate, imminent danger.*

*The position put forward by the team at the time, including the Child Care Board, was that there could be circumstances that are so egregious that require immediate action. The point then that was just made by the Director, which is that oftentimes in the old order, a police officer may not be available. It would mean that if a police officer is not available, the Child Care Board definitely cannot act and it worsens the reality for the child.*

*The other thing is this. We had conversations with the Barbados Police Service and they have asked us to have a meeting so that they can better understand their new responsibilities under the law and to make themselves more available to the Board in these circumstances with that new understanding of the law. My concern, having been influenced by the conversation, because originally in my position and having worked at the Child Care Board was, “shall”, when necessary. It was always the case that a police officer should be necessary but then there were social workers, one in particular who*

*raised the point that he visited a house and saw a mother hanging her child on nails, for example and he took down the child and moved with the child. In that case, what we would be doing would be so limiting that an officer would not be in a position to move, then the compromise we made is the one the CPC suggested which is that in circumstances where you have to act, then within twenty-four hours, you have to go and justify your position before the Court and to prove, as laid out here, that it was in relation to the health or safety of the child being in immediate or imminent jeopardy. By allowing us to say, if necessary, you can act even if a police officer is not there but it is in the Board's interest to always seek to have a police officer present."*

The Committee agreed that the language of Clause 31(1) would remain and therefore the recommendation was not approved.

An omission was identified and corrected regarding Clause 29(6), the word "plan" was inserted after the word "care" and should now read: "*Where a care plan is developed pursuant to subsection (2)(b) that care plan...*".

It was recommended that a provision be made and be included in Clause 33 for the creation of a Secure Treatment Facility which will cater for a new provision – children with "extreme behaviours". It was suggested that Clause 5 and Clause 33 would have to be amended to reflect that.

Ms. Shawn R. Belle reported that after consultation with the parent Ministry it was determined that such a provision within the Bill was unnecessary. However, such matters would be dealt with by way of subsidiary legislation. The Committee concurred.

The CCB also made recommendations relative to the CJB. One notable recommendation was that timelines should be identified for the execution of Court Orders by Officers.

In relation to aforementioned recommendation, Ms. Shawn R. Belle explained that Clause 114 states that, "*This Act comes into force on a date to be fixed by proclamation.*" This would give the Minister time to make the necessary regulations in relation to specific areas of the Bill that needed to be properly operationalised.

Finally, Madam Chairman informed the CCB that during the examination of the written submissions one (1) person raised the issue of Diversion within the CJB beginning from Clause 33 to Clause 39. She stated:

*“As it stands, the process contemplates that a magistrate will have initial meetings with the child to determine if diversion then should become necessary. One of the submissions proposed suggested that this is putting the cart before the horse and it would be better that not a magistrate but a Board, with trained specialists like yourselves, social workers, psychologists, and so on; will be put in place to determine whether diversion is necessary to alleviate a child having to stand before a magistrate and happen to be in the system.”*

Ms. Shawn R. Belle responded:

*“The Bill makes it clear that the initial inquiry in which the diversion decision will be made is not to be considered to be a criminal proceeding. In fact, it is even stated within the Bill in terms of the diversion, that it is designed to prevent stigmatisation and the consequences flowing from the subject being before a criminal justice system and also, it would prevent the child from having a criminal record. That is what the initial inquiry and the diversion mechanism was supposed to facilitate.”*

After some discussion, it was agreed that further consideration should be given to the mechanism of Diversion as a policy decision by the Ministry.

Ms. Shawn R. Belle, after consultation with the parent Ministry reported to the Committee that in relation to “Failure to comply with diversion direction” at Clause 38, Clause 38(1)(b) was subsequently amended and should now read: *“a written notice to the parent to have the child appear before a magistrate”*. The Committee agreed to the amendment.

**3. Barbados Bar Association’s Team (BBA): (Transcript follows)**

Mrs. Kaye Williams, President

Ms. Margo Greene, QC

Mrs. Peta-Gay Lee-Brace.

The Chairman stated that the Committee did not receive any previous written submission. However, after the formal introductions by the Chairman and by Mrs. Kaye Williams, President of the BBA, Ms. Margo Greene began to make the presentation on BBA's concerns regarding the CPB. She started by going through Clause by Clause beginning at Clause 2, "Interpretation". As she proceeded the Chairman interjected and stressed that the submission appeared to be "granular" and it would be better that the members of the Committee and Ms. Belle have sight of the BBA's written submission prior so that they could respond accordingly.

The BBA was given the deadline of Thursday, September 21<sup>st</sup>, 2023 to submit the written submission by 4:00 p.m. The Committee agreed that the BBA would reappear before the Committee on Tuesday, September 26<sup>th</sup>, 2023 at 12: 45 p.m.

**Barbados Bar Association (BBA)** (Tuesday, October 3<sup>rd</sup>, 2023) (Transcript follows)

It must be noted that the Committee received the BBA's written submission.

Ms. Margot Greene led off the presentation which was based primarily on the CPB. First, recommendations were made based on a few of the definitions in Clause 2, "Interpretation". The recommendation that the definition of "*financial abuse*" be expanded and should include identity theft was noted and taken into consideration by CPC.

Another recommendation which was to amend the definitions of "*physical abuse*" and "*verbal abuse*" to exclude the words, "*omission*" and "*silence*" was revisited. Ms. Belle suggested that they could be dealt with separately in the Bill.

The recommendation in relation Clause 7(4) which addresses a child's entitlement to legal representation by an attorney-at-law and payment *via* legal aid was accepted. Ms. Belle proposed that consequential amendments to the Community Legal Services Act, Cap. 112A would be provided for in the Second Schedule of the Bill.

In relation to Clause 24 (1) which provides for "Mandatory reporting" and (5) which states that "*Nothing in this section abrogates any attorney-client privilege*". Ms. Greene stated thus:

*“The doctors are having a concern with this because they feel that having to report in a mandatory fashion could lead to a breach of their doctor-patient confidentiality. You have put in a caveat for the attorneys-at-law; you may consider doing the same thing for doctors. Doctors also felt that if you do not do this, you could send children underground to seek medical attention from unsavoury practitioners or those who are not licensed to practise at all, in order to escape having their information being made widespread or being told to the authorities and getting the State involved.”*

The question put to the Committee was whether the aforesaid exception could be extended to the medical practitioner and the medical practitioner-patient relationship; and to the *“Confessional Seal which is the sacrament of reconciliation . . . under the Roman Catholic right . . . and is bound by vows of confidentiality.”*

Ms. Shawn R. Belle responded as follows:

*“Madam Chairman, just in relation to that, [it]is more to do with not an omission but a question of whether an exception should be expanded so at Clause 24(5) ...*

*The latter one, in terms of the Church, policy direction is definitely required but the medical practitioner, here is where you have to draw a line in the sand because they are the persons that would come into contact with persons who would have been abused and they would have training enough to see whether some kind of abuse is happening and as a matter of policy; given the seriousness of the abuse, to create a situation where the doctor does not report. That is problematic from a policy point of view.”*

The Committee agreed that CPC should bring this concern through the parent Ministry to the attention of the Solicitor General’s office to be properly ventilated and discussed at the policy level.

In relation to the Subheading *“Care plan”*, the basis for the recommendation to include a reference to a psychologist or a psychiatrist under Clause 38(1) was because BBA believed that such persons should be involved in preparing the care plan and it should not be left to the



Director. Ms. Shawn R. Belle consulted with the parent Ministry and reported that the parent Ministry felt that such referrals for every care plan was excessive and that the Court was the final arbiter and would decide whether such expert evidence was required. The report was accepted by the Committee.

Finally, “*Custody Care Order*”, Clause 42, the recommendation was that the words “*custody*” and “*care*” should be two separate concepts and should therefore be defined separately within the Bill. A discussion ensued and it was explained that the Bill gives the parameters as to how this order should operate. Ms. Shawn R. Belle proposed that a new definition of “*Custody Care Order*” as described in Clause 42 and within the context of the Bill could be inserted in Clause 2, “*Interpretation.*”

**4. Family-Faith-Freedom Barbados’ (FFFB) Team: *(Transcript follows)***

Mr. Hutson Inniss, Executive Director

Mrs. Davida Maynard-Holligan

Reverend Carl Barker

Mr. Hutson Inniss, Executive Director introduced himself, Mrs. Davida Maynard-Holligan, Attorney-at-Law and Community Outreach Officer; and Reverend Carl Barker, Immediate Past Vice Chairman of FFFB.

Mrs. Davida Maynard-Holligan led off the presentation by addressing FFFB’s concerns on both the CPB and the CJB.

She primarily focused on the Purpose of the legislation as defined or set out in Clause 3(1)(a) of the CPB and Clause 3 of the CJB. She submitted that even though Barbados does not subscribe to the concept of sexual orientation, gender identity and transgenderism, the evidence was visible through the intentional promotion by the United Nations organisations and through all the other international instruments which Barbados is a signatory. She stated that:

*“... this is why they are so strident in cautioning the drafters of our legislation against stating in Section 3(1)(a) of the Child Protection Bill and Section 3 of the Child Justice Bill, that the purpose of the legislation is to ensure compliance with not only the specific Treaties listed in the Bills but with all international instruments to which Barbados is a party. The fact that this is stated as the primary purpose of the Bills weakens any argument, they may later wish to make in the cause of making exceptions to accommodate the particular sensitivities of our local, cultural and social norms.”*

She further argued that Barbados’ legislative framework would continue to be challenged and believed that there would be pressure on our country to amend our laws to facilitate the gender transitioning of minors. Therefore, FFFB recommended that the purpose given at Clause 3(1)(b) to (e) of the CPB ought to be the sole purpose of the Bill.

Ms. Shawn R. Belle countered her argument and stated that:

*“... if we remove the said offending purpose of Clause 3(1)(a) for instance in the Child Protection Bill and the corresponding Clause 3 in the Child Justice Bill, Barbados would not be bound by those obligations. However, by virtue of the fact that we have signed onto it, we would still be bound by those measures. The only way then that we can really not be bound, is to put in a reservation in relation to certain obligations, which as a sovereign state we have the right to do.”*

Ms. Belle concluded that those conventions represent the standards in relation to child protection and moreover a child in need of care and protection as set out in Clause 5 of the Bill. Additionally, the primary purpose of the Conventions and all the other instruments within the context of the Bills, is to serve the best interest of the child.

**5. Democratic Labour Party’s (DLP):** *(Transcript follows)*

The Democratic Labour Party (DLP) was represented by Ms. Felicia Dujon, Third Vice President and Ms. Tyra Trotman, Attorney-at-Law/Member of the Young Democrats.

Ms. Felicia Dujon stated that the DLP had submitted their written submission and began the presentation, which was primarily based on the major issues concerning the CPB. Recommendations were also provided to the Committee.

She believed that the language used in the CPB is ambiguous and needed more clarity especially in the extreme circumstances whereby a minor is removed from his or her home. She argued that the Bill creates more foster homes and child care centres but it neglects to address the issue of pre-qualifications of the children for placement within the said facilities.

Ms. Shawn R. Belle indicated that Clause 4(f) makes provision that:

*“Where a child is removed from the home of his parent under this Act, whether temporarily or permanently,*

- (i) he shall be entitled to a safe, nurturing, unsecure environment; and*
- (ii) the child may retain relationships with people significant to the child, including his parents, relatives, peers, family friends and community unless it is contrary to his best interest . . .*

*“In addition, the Bill also speaks to the power of the Director to remove a child in very restrictive circumstances and those circumstances are very clearly articulated in Clause 31 . . . and she concluded . . . It would not be accurate to say that there are no clear parameters that speak to when the child can be removed from his environment.”*

One of Ms. Dujon’s critical submissions was the issue that the CPB undermines parental rights which seems to replace parental authority with the authority of the Director and sets a very dangerous precedent. She argued that parental rights and responsibilities are separate legal entities and cannot be overridden by the State. She added that if a parent violates the terms as set in Clause 5, “Child in need of care and protection”, the State would have a right to intervene which was problematic in the circumstances. She also had a difficulty with the presumption that

the State makes the determination of what is in the best interest of the child therefore extinguishing parental rights.

Ms. Belle reiterated that the jurisdiction of the legislation speaks to children in need of care and protection as articulated in Clause 5. She summarised in part, as follows:

*“This is where the child (a) does not have a parent; and (b) the child who does not have a parent who is fit to exercise care or guardianship, and it explores those circumstances – has suffered harm, neglect, failure of a parent to supervise or adequately supervise; a victim of abuse or exploitation, abandonment, exposure to danger, moral and otherwise. It should be noted that the word “moral” will be deleted...”*

She further provided a wholistic view of the Bill based on the circumstances whereby the child is in need of care and protection. She added some guidance, and clarification on certain provisions and child protection procedures. She concluded by drawing *attention as well to the nature of the Director’s powers in relation to investigation in particular at Clause 28(3) viz:*

*“An investigation by a Director may include the analysis of the following matters in relation to the child:*

- (a) medical;*
- (b) health;*
- (c) social;*
- (d) residential;*
- (e) educational;*
- (f) economic; and*
- (g) any other factors relating to the life of the child.”*

*“I draw these things to your attention so that you appreciate that the Bill must be taken as a whole and not in parts and they work in tandem together. As such, it cannot be asserted that it does not take into account the economic factors but in fact sets out in the Bill specifically, that the Director needs to take those things into account and it also sets*

*out the jurisdiction that when it is supposed to be invoked. This is not a Bill to deal with general care and protection of the child. This is a Bill dealing with where a child is in need of care and protection. Those things are already stipulated in Clause 5."*

Another notable concern raised by Ms. Dujon was the application of penalties relative to certain offences. She mentioned that in relation to cruelty to children pursuant to Clause 61, the person, *"is guilty of an offence and is liable on summary conviction to a fine of \$100,000 or to imprisonment for a term of 10 years or to both."* She believed that the State exonerates itself in relation to cruelty to children.

In relation to the above issue, Ms. Belle responded that the Interpretation Act, Cap. 1 speaks to the fact that it expresses statutory penalties in the maximum and was discretionary. She validly made the point that *"person"* also captures the abuses that could be put in relation to the State.

Ms. Tyra Trotman concluded the DLP's presentation by highlighting the word *"jurisdiction"* which was used within the context of those children in need of care and protection in the Bill. She further expounded on the Bill's language and referred to preamble reflecting the Long title: *"An Act to make provision for the reform of the law on the care and protection of children"* which she believed was very general and wide in its interpretation. She recommended that it be amended to cure the mischief in the language.

The Committee agreed with the recommendation to make an amendment to the Long title of the CPB so that there would be more clarity.

The Committee concluded its deliberations of the five (5) oral presentations and turned its attention to the examination of the CPB and the CJB, respectively, Clause by Clause.

## **A. EXAMINATION OF THE CHILD PROTECTION BILL, 2023**

### **OBJECTS AND REASONS**

#### **Long title**

The Committee agreed that the Long title should now read: *“This Act makes provision for children in need of care and protection.”*; and concomitantly the Objects and Reasons of the Bill were amended.

### **PART I – PRELIMINARY**

#### **Short title**

##### **Clause 1:**

In the Short title the words “2023” was deleted and substituted with the words “2024”

#### **Interpretation**

##### **Clause 2:**

##### *“verbal abuse”*

The Committee agreed to amend its definition and therefore the word *“silence”* was deleted.

##### *“custody care order”*

Based on the recommendation that “custody” and “care” were two separate concepts, the Committee agreed after CPC’s consultation with the parent Ministry that ‘custody care order’ in the context of the Bill did not offend any legal concepts; and this formulation was to do with custody being descriptive of the care order and not two separate elements.

##### *“physical abuse”*

The Committee agreed to amend its definition and therefore the words *“or omission”* was deleted.

##### *“financial abuse”*

The Committee gave consideration to expanding its definition but after subsequent consultation with CPC, no amendments were made.

### **Purpose**

Clause 3(1) The purpose of this Act shall be to

- (a) ensure compliance with
  - (i) the United Nations Conventions on the Rights of the Child;

The Committee agreed that Clause 3(1)(c) should now read: *“provide for a child in need of care and protection in accordance with section 5”*. This provided further clarity to persons and showed the true intention of the Bill thus eliminating any mischief. However, a robust discussion ensued with regard to deleting or rearranging the paragraphs under Clause 3(1)(a)(i)-(iii) and (b)-(e).

Ms. Shawn R. Belle reiterated thus:

*“The thing is the argument that people are making which is why the removal is problematic to me, is that they say that if you take this out that somehow Barbados would not be bound and what they do not understand is that we are already bound. Taking this out is not going to change that reality. What this does is reaffirm our commitment that we already made.”*

In relation to the issue of deleting or rearranging the paragraphs under Clause 3(1) Ms. Belle after consultation with the parent Ministry, redrafted Clause 3(1) to shift the compliance with International Conventions to subsection (d) of the Clause.

### **Child in need of care and protection**

Clause 5(1)(f)

The Committee agreed to amend Clause 5(1)(f) by deleting the word “moral”.

Clause 5(1)(m) was amended by deleting the words “*section 39*” and substituting the words “*section 40*” therefor.

### **Participation of a child**

Clause 7(4)

The Committee agreed that in relation to the provisions of Clause 7(4), that consequential amendments be made to the Community Legal Services Act, Cap. 112A (CLSA) PART II of the First Schedule thereof by amending the Second Schedule of the CPB so that “an Attorney-at-Law would be paid by the State where there were proceedings or hearings in relation to the child.”

## **PART III: INTERVENTIONS, REPORTS AND INVESTIGATIONS**

### **Mandatory reporting**

Clause 24(1) This section shall apply to

- (a) a parent;
- (b) a medical practitioner, a health practitioner, a dental practitioner, a nurse or a mental health practitioner;

The issue was whether to delete the term “*medical practitioner*” which was viewed problematic from a policy point of view. However, the Committee strongly objected and believed that it should be retained but nevertheless recommended that it be referred to the parent Ministry to be reviewed.

Ms. Shawn R. Belle reported that the parent Ministry had informed that there was no recorded objections to-date on mandatory reporting from Medical Practitioners especially from their representative body, BAMP.

Clause 24(5)

In relation to the term “*attorney-client privilege*” the question was whether this exception should be extended to medical practitioners (MP) and then to the MP-patient relationship; and also, to the Catholic priests to include the confessional seal.



In relation to the confessional seal, Senator Rev. Canon Dr. John A. Rogers explained for the benefit of the Committee stating that:

*“Where the Church is concerned, what was spoken of was the Confessional Seal or what is called the Seal of Confession in the Anglican Church because both Churches have it. The confession is a sacrament; once a person speaks to a Priest in confession it comes under Sacramental Seal. In fact, it is one of the most serious things in the Roman Catholic Church; you can be excommunicated for divulging anything that is said in confession. The Church’s Canon law prevents the priest from actually divulging that information because of the Sacramental Seal.”*

After some discussion, the Committee referred the issue for ventilation at policy level by the parent Ministry. Ms. Shawn R. Belle reported that it was the opinion of the parent Ministry that with regard to the Catholic priests’ confessional seal, that the Bill does not specify any religious sect and to create such an exemption would necessitate the removal of “religious from the categories of persons required to report.”

#### **Action taken by Director**

##### **Clause 29(6)**

In Clause 29(6), “care” was inserted and should now read: *“Where a care plan is developed pursuant to subsection(2)(b) that care plan shall be signed by the parent of the child who is the subject of the care plan.”*

#### **PART IV: CARE AND PROTECTION ORDERS**

##### **Residential protection and treatment centre order**

##### **Clause 33(1)(c)**

In this Clause, the words “section 39” to be deleted and substituted with the words “section 40”.

#### **PART V: CHILD CARE CENTRES**

##### **Approved child care centres**

## Clause 53

Clause 53 was amended by deleting the letter 's' from the word "cares" and the word "centres" inserted after the word "care". It should now read: "*The Minister may grant approval for child care centres in accordance with such regulations as may be prescribed.*"

## **Purpose of approved child care centre**

### Clause 54(2)

In Clause 54(2) the word "*service*" was replaced and substituted with the word "*centre*" and should now read: "*The Staff of the approved child care centre and the Director shall assist the child to become reunited with his parent.*"

## **Corporal punishment in child care centres**

### Clause 59(2)

The recommendation was that what is "*severe or frightening*" should be further elucidated on for clarity at the policy level by the parent Ministry. Ms. Shawn R. Belle discussed the issue with the parent Ministry and reported that the words "*severe or frightening measures*" should be deleted and substituted with the words "*cruel, inhuman or degrading measures*" because of the language used in international law and the Barbados Constitution. The Committee concurred.

## **PART VII: MISCELLANEOUS**

### **Repeal and savings**

Clause 68(1) The following Acts are repealed:

68(1)(b) was amended by deleting the words "*Prevention of Cruelty Act, Cap. 145*" and substituting the words "*Prevention of Cruelty to Children Act, Cap. 145*".

## **FIRST SCHEDULE (Constitution and Procedure of the Child Protection Board)**

### **Temporary appointment of Board**

In paragraph 2, the Shoulder note was amended by deleting the words "*of Board*" and should now read: "*Temporary appointment*".

## **SECOND SCHEDULE (Consequential Amendments)**

As mentioned previously, Part II of the First Schedule to the Community Legal Services Act, Cap. 112A was amended to make provision for an Attorney-at-Law to be paid by the State where there were proceedings or hearings in relation to the child. The Second Schedule of the CPB addresses consequential amendments and makes provision for the amendment as described above, accordingly.

The examination and consideration of the CPB was concluded.

### **A. EXAMINATION OF THE CHILD JUSTICE BILL, 2023**

#### **PART I – PRELIMINARY**

##### **Short title**

Clause 1:

In the Short title the words “2023” was deleted and substituted with the words “2024”

The Committee made no further amendments to **PART I** through **PART III** of the Bill.

#### **PART IV – SECURING ATTENDANCE OF A CHILD AT INITIAL INQUIRY**

##### **Death, injury or illness of a child in policy custody**

Clause 22

The word “*policy*” was deleted and the word “*police*” substituted therefor.

#### **PART V – INITIAL INQUIRY AND DIVERSION**

The Committee was concerned with the policy and process of diversion. They had significant discussions as to whether the process fairly achieved all of its objectives.

It was agreed that the entire process of diversion should be referred to the parent Ministry for a policy decision and to advise whether specifically the child appearing before a magistrate is something that it would revisit and amend. Alternatively, they should consider that there may be some validity in examining another model to effect diversion.

## **Purposes of Diversion**

### **Clause 34**

The Committee focused on Clause 34(g) and (h); and after some discussion decided that the Committee's concerns with the provisions in these Clauses be brought to the attention of the parent Ministry for further information when making its decisions relative to the mechanism of diversion.

Ms. Shawn R. Belle reported on her discussions with the parent Ministry on the issues raised by the Committee on Diversion. The Committee agreed to the sole amendment made by the parent Ministry relative to the provision for "Failure to comply with diversion direction", by amending Clause 38(i)(b) thus: "*a written notice to the parent to have the child appear before a Magistrate.*"

## **PART VI – COURT PROCEEDINGS**

### **Conduct of proceedings relating to child in Court**

#### **Clause 42(1)**

At the end of Clause 42(1), the words "*in a manner that can be understood by a child*", was changed from bold font to regular.

The Committee made no amendments to **PARTS VII, VIII and IX.**

## **PART X – SECURE RESIDENTIAL FACILITY**

### **Secure residential facility**

#### **Clause 68**

Clause 68(a)(iv) was amended by deleting the words “*a term of imprisonment*” appearing therein and substituting the words “*a term of detention*”.

### **Power of the Director to impose discipline on a child in a secure residential facility**

#### Clause 87

Clause 87(1) was amended by deleting the words “*severe or frightening measures*” appearing therein and substituting the words, “*cruel, inhuman or degrading measures*”, which amendment mirrors the amendment made to the CPB.

### **Discharge approval by Minister**

#### Clause 92

The issue here was whether the Minister should consult with the Director and whether there should be a breakdown of the reasons why the Minister should have this type of power, if it is for compassionate reasons or otherwise. After some discussion, it was agreed that there was need for clarification in relation to who had the authority to make the application to the Minister and for a reconsideration of the Minister’s powers.

This issue was brought to the attention of the parent Ministry by Ms. Shawn R. Belle and Clause 92 was recommended to be amended thus: “*The Minister may, on consultation with the Director, approve the discharge of a child from a secure residential facility on application made to him in writing by an appropriate adult, attorney-at-law representing the child or a parent where that child has served two-thirds of his sentence or term of the order or the custodial portion of the sentence made by a magistrate or judge.*”. The Committee concurred.

The Committee made no amendments to **PARTS XI and XII** and to the **FIRST** to the **THIRD SCHEDULE**.

## **FOURTH SCHEDULE**

### **First meeting**

#### **Paragraph 6**

The Chairman queried the significance of the *one-month* timeframe and what would be consequences, if any, of not meeting the time period.

There being no sanctions and on the advice of the Ms. Belle, the Committee agreed to delete this entire paragraph which resulted in the consequential change of renumbering of the paragraphs going forward.

## **FIFTH SCHEDULE**

### **Minutes**

#### **Paragraph 7**

The Chairman queried why the provision was for the Minutes of the Reintegration Board to be submitted "*as soon as possible after they have been approved by the Reintegration Board*" as compared to the provision for the Minutes of the Child Justice Board to be submitted within "*two weeks after each meeting*"?

The response from Ms. Belle was that: "*The Reintegration Board in terms of its jurisdiction, has to do with the early release of a child who would have been detained; there should be as much expedition in relation to time, relating to this particular matter and that is why it is structured in this way ... this can be tied in the same way as the Child Justice Board with the two-week timeline, so it can be redrafted that way. It is just to remember that with proceedings involving children; things should be resolved as soon as possible. At least the two-week timeline would give the sphere for operation.*"

In light of the foregoing, the Committee recommended that paragraph 7 be redrafted by CPC to include a two-week timeline for the submission of the Minutes of the meetings of the Reintegration Board. Paragraph 7 of the *Fifth Schedule* was amended thus: "The Reintegration Board shall submit the minutes of the meetings of the Reintegration Board to the Minister within two weeks after they have been approved by the Reintegration Board."

The Committee made no amendments to the **SIXTH SCHEDULE**.

Consideration of the Clauses and Schedules of the CJB were concluded.

## **CONCLUSION**

Having given due consideration to the various submissions – written and oral; and after interaction with those presenters along with the many robust discussions, and with the benefit of guidance by Ms. Shawn R. Belle, Chief Parliamentary Counsel (Ag.), the Committee agreed to the amendments as shown in the Tables of Amendments appended hereto and marked “**D1**” and “**D2**” and reflected in the redrafted Bills, appended hereto and marked “**E1**” and “**E2**” with explanatory memoranda appended and marked as “**E1a**” and “**E2a**” appropriately.

Transcripts of all the meetings except the preliminary are appended hereto and marked “**F1**” to “**F8**”.

The majority of the submissions and presentations were focused on the issue of sexual orientation and gender identity with respect to the CPB. The Committee spent a generous amount of time in vigorous discussions on the matter with the assistance of evidence and explanations provided by Ms. Shawn R. Belle to the satisfaction that the Bill does not allow the State to assign gender or to make determinations on sexual orientation. As regards to the CJB the major concerns and contentions were with the provisions for “Diversion” and “Secure residential facility” which were satisfactorily resolved.

## **ACKNOWLEDGEMENT**

The Committee wishes to acknowledge and thank all those organisations and persons who took the time and effort to submit written submissions. An expression of gratitude is extended to all those who were willing to make oral presentations before the Committee stimulating numerous questions and worthwhile discussions.

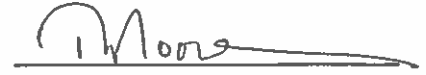
Though the Committee may not have agreed with all the concerns raised, the suggestions and the recommendations put forward, it is forever grateful for the different perspectives and views shared which valuably assisted it in making the relevant amendments reflecting greater transparency and accountability.

The Committee expresses its sincere thanks and appreciation to former Sen. Dr. the Hon. Chelston W. Dac Brathwaite for his participation and for his solid and useful contribution to the Committee's work. An immense amount of gratitude is also expressed to Ms. Shawn R. Belle, Chief Parliamentary Counsel (Ag.) for her tremendous assistance, tenacity, diligence and foresight in enabling the Committee to accomplish its work in a satisfactory manner. The Committee further extends gratitude to the Office of the Clerk and the staff of Parliament for its diligence and commitment in expediting the work of the Committee.

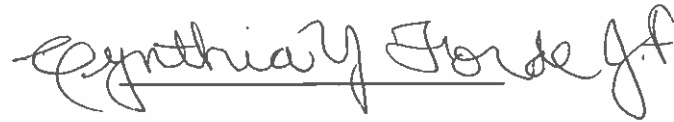


**Approved by the Members of the Committee: -**

**Ms. Toni N. S.-A. Moore, J.P., M.P. (Chairman)**



**Her Honour Cynthia Y. Forde, J.P., M.P.**



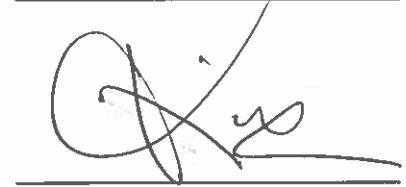
**Mr. Trevor A. Prescod, J.P., M.P.**



**Hon. Corey A. Lane, J.P., M.P.**



**Senator John A. King**



**Senator Rev. Canon Dr. John A. Rogers, D.Th.**



**Senator Dr. the Hon. Chelston W. Dac. Brathwaite, CHB, PhD**



**Dated this 20<sup>th</sup> day of February, 2024.**



# MINUTES



**PARLIAMENT OF BARBADOS  
(FIRST SESSION OF 2022-2027)**

**JOINT SELECT COMMITTEE (STANDING)  
ON SOCIAL SECTOR AND THE ENVIRONMENT**

Minutes of the Preliminary Meeting of the Joint Select Committee (Standing) on the review and examination of the **Child Protection Bill, 2023** and the **Child Justice Bill, 2023** held in the Ermyntrude “Ermy” Bourne Committee Room, Parliament Buildings, Trafalgar Street, Bridgetown on Thursday, July 27<sup>th</sup>, 2023 at 10:30 a.m.

**PRESENT WERE:**

Ms. Toni N. S-A. Moore, J.P., M.P. (Chairman)

Miss Cynthia Y. Forde, J.P., M.P.

Hon. Corey A. Lane, J.P., M.P.

Sen. Dr. the Hon. Chelston W. DaC. Brathwaite, CHB, Ph.D.

**IN ATTENDANCE WERE:**

Miss Beverley S. Gibbons, *Deputy Clerk of Parliament*

Miss J’anne C. Greenidge, *Typist (Journal Department)*

**ABSENT:**

Mr. Trevor A. Prescod, J.P., M.P.

Sen. Rev. Canon Dr. John A. Rogers, D.Th.

Sen. John A. King

These Minutes form part of the First Meeting of the Committee.

**Item 1: EXECUTION OF THE TERMS OF REFERENCE**

The members present were presented with a booklet on the Committee System which included guidelines for perusal. It was agreed that the proceedings of the Committee would be conducted in hybrid format to allow members to be present electronically in order to secure a quorum of four (4) members. Senator Dr. the Hon. Chelston Brathwaite, CHB raised a question about the role of the members of the Committee and Madam Chairman guided him accordingly.

A discussion ensued between Madam Chairman and the Deputy Clerk. The Deputy Clerk indicated that it is intended that the Committee commence its work by September 1<sup>st</sup>, 2023 on the Child Protection Bill, 2023 and the Child Justice Bill, 2023 and that the deliberation on the Bills would include written and oral submissions from stakeholders. The terms of reference regarding the Bills would be determined in due course.

**Item 2: SCOPE OF WORKS**

Madam Chairman expressed belief that the committee's work would be extensive and that the Committee would determine the timeline of its work by the number of submissions received from the stakeholders and the public. She further informed that a representative from the Chief Parliamentary Counsel would be the technical support to the Committee for the purpose of advising the Committee on the Bills and taking drafting instructions.

The Committee discussed a projected schedule of its work and Madam Chairman proposed that members identify organisations, individuals and interest groups to be invited to make written submissions and oral presentations.

The Committee considered and agreed that advertisements would be placed in the press inviting submissions in writing or in person. It was agreed that the following organisations and persons should be written inviting submissions/comments in writing or in person (the list is not exhaustive):

- PAREDOS
- National Association of PTA
- Faith Marshall-Harris
- Marsha Hinds-Myrie
- Child Care Board
- Government Industrial Schools
- UNICEF
- Council of the Disabled
- Derrick Smith Vocational School
- Political Parties – DLP and PDP
- Youth Parliament
- National Council of Substance Abuse
- Barbados Association of Professional Social Workers
- Barbados Police Service
- Probation Department
- Juvenile Liaison Scheme
- Community Policing Department
- Ministry of Sports, Youth and Community Empowerment
- Child Psychologists
- Chief Education Officer
- Teachers Unions – Barbados Union of Teachers (BUT), Barbados Secondary Teachers' Union (BSTU)
- Barbados Bar Association
- Barbados Association of Medical Practitioners (BAMP)
- Non-Government Organisations under the psychology/social work umbrella
- Diocese of Barbados
- Employment Rights Bureau
- Ministry of Home Affairs
- Ministry of Elder Affairs and People Empowerment

The office of the Clerk of Parliament would prepare the letter of invitation to be disseminated to the abovementioned.

The Committee will be hosting its meetings at Parliament Buildings, Trafalgar Street, Bridgetown. Access to the proceedings of the Committee will also be available to the public *via* Zoom (shareholders and invitees on allotted dates) live streaming on the Barbados Parliament website, YouTube and the GIS website.

A press release would be posted *via* several media houses and networks in Barbados including the Nation newspaper, the Barbados Advocate and Government Information Service (GIS). Announcements on the Committee's work would also be made *via* CBC and Starcom Network.

Madam Chairman indicated that the Report of the Committee should be ideally completed within one (1) month of completion of the Committee's work.

### **Item 3: MANNER OF DEALING WITH THE BILLS**

The Committee agreed to consider the Bills together to avoid redundancy and any overlapping thereof. It was felt that if the Bills were dealt with separately the Committee would take more time to conclude its work in a time sensitive period which is a matter they wished to avoid.

### **Item 4: ADVERTISEMENT OF THE BILLS BY THE OFFICE OF THE CLERK TO THE PUBLIC**

The Committee with the advice of Madam Deputy Clerk considered the Press Release and agreed that it should be posted on Sunday, August 6<sup>th</sup>, 2023 in the Nation newspaper with subsequent releases *via* other media at later dates. They also noted that written submissions should reach the Clerk's Office at Parliament Buildings, Trafalgar Street, Bridgetown **by Friday, August 18<sup>th</sup>, 2023** for consideration by the Committee.



Members discussed the length of the oral presentations to be made to the Committee. It was agreed that there would be ten (10) minute presentations, with a 5 minute time period for questions and answers.

**ANY OTHER BUSINESS**

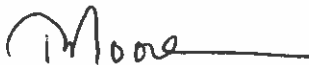
There was none.

**ADJOURNMENT**

There being no further business the meeting was adjourned *sine die*

  
Deputy Clerk of Parliament

Confirmed this 25<sup>th</sup> day of August 2023.

  
Chairman



**PARLIAMENT OF BARBADOS  
(FIRST SESSION OF 2022 - 2027)**

**JOINT SELECT COMMITTEE (STANDING)  
ON SOCIAL SECTOR AND THE ENVIRONMENT**

Minutes of the First Meeting of the Joint Select Committee (Standing) on the review and examination of the Child Protection and Child Justice Bills, 2023, held in the Senate Chamber, Parliament Buildings, Trafalgar Street, Bridgetown, St. Michael on Friday, August 25<sup>th</sup>, 2023 at 10:00 a.m.

**PRESENT WERE:**

Ms. Toni N. S-A. Moore, J.P., M.P. (Chairman)  
Sen. John A. King  
Hon. Corey A. Lane, J.P., M.P.  
Mr. Trevor A. Prescod, J.P., M.P.  
Sen. Rev. Canon Dr. John A. Rogers, D.Th.  
Sen. Dr. the Hon. Chelston W. DaC. Brathwaite, CHB, Ph.D.

**ABSENT:**

Miss Cynthia Y. Forde, J.P., M.P.

**IN ATTENDANCE WERE:**

Ms. Beverley S. Gibbons, *Deputy Clerk of Parliament*  
Mr. Nigel R. Jones, *Deputy Clerk of Parliament*  
Ms. Shawn R. Belle, *Chief Parliamentary Counsel (CPC)(Ag.)*  
Ms. Suzanne Hamblin, *Library Assistant (Journal Department)*  
Miss J'anne C. Greenidge, *Typist (Journal Department)*

**Item 1: Formal appointment of Chairman and Deputy Chairman**

Deputy Clerk, Ms. Beverley Gibbons called the meeting to order at 10:25 a.m.

On the motion of Sen. Rev. Canon Dr. John A. Rogers seconded by Sen. Dr. the Hon. C. W. Dac. Brathwaite, Ms. Toni N. S-A. Moore was appointed Chairman who took the Chair and welcomed all.

On the motion of Sen. Rogers seconded by Sen. Brathwaite, Sen. John A. King was appointed Deputy Chairman.

**Item 2: Minutes of the Preliminary Meeting held on Thursday, July 27<sup>th</sup>, 2023**

On the motion of Sen. Brathwaite seconded by Sen. King the Minutes of the Preliminary Meeting held on Thursday, July 27<sup>th</sup>, 2023 were taken as read.

Ms. Shawn R. Belle stated that the Chief Parliamentary Counsel's office should be removed from the list of stakeholders as the office was only required to provide the service of drafting legislation and offer technical support to the Committee.

There being for further errors or omissions, on the motion of Sen. Brathwaite seconded by Sen. King the Minutes were confirmed as amended.

**Item 3: Matters Arising**

Madam Chairman raised the issue of the deadline for the written submissions to reach the office of the Clerk of Parliament no later than Friday, August 18<sup>th</sup>, 2023. She noted that the deadline was extended to Friday, August 25<sup>th</sup>, 2023.

Sen. Rogers suggested under Item 3, "Scope of Works" that the Barbados Christian Council (BXC) be included in the list of stakeholders and to write to Dr. Cicely Athell-Horsford of the Mt.

Tabour Moravian Church, St. John inviting them to submit written submissions. The Committee agreed and granted an extension of one (1) week from the deadline to make their submissions.

Mr. Trevor A. Prescod referred to Item 4, “Manner of Dealing with Bills” and suggested that he would like to see the codification of both Bills and any other Acts which related to the rights of children. A discussion ensued and Ms. Belle explained the distinctive approach and rationale as to why both Bills were taken together for the benefit of the Committee.

Sen. Rogers stated that as a Commissioner of the Constitutional Reform Commission (CRC) they would have received written submissions from the public on child protection and parental rights amongst other things. He queried whether those submissions could be dealt with by this Committee. It was agreed that the CRC would have to determine whether they would share or direct such information to the Committee on the basis that they would have informed the persons who made submissions.

Sen. Brathwaite raised the point that the Child Protection Bill, 2023 was focused mainly on the care and protection of children more so than addressing the responsibility and rights of the parents. He believed that the parental rights and responsibilities should be protected going forward. However, Ms. Belle explained that Clause 5: “Child in need of care and protection” formed the grounds as to why the rights of the child would have been largely emphasised throughout the Bill.

**Item 4: Quorum (Hybrid Format)**

The Committee agreed that for the purpose of a commencing a Hybrid meeting of the Committee no less than three (3) persons including the Chairman must be physically present.

**Item 5: Consideration of the Child Protection Bill, 2023 and the Child Justice Bill, 2023. Technical Support – Chief Parliamentary Counsel’s Office**

Ms. Belle presented an overview of the explanatory memorandum of the Child Protection Bill, 2023 and explained the Bill in Parts and the Clauses contained therein.

She also gave an overview of the explanatory memorandum of the Child Justice Bill, 2023. Similarly, she began to consider and explain Parts and Clauses as are contained in the Child Justice Bill, 2023. It was noted that under Part X, “Residential Facility”, Clause 68(a)(iv) provided: “a term of imprisonment”. It was queried whether it could be amended to state “a term of detention” rather than “imprisonment”? It was agreed that CPC would soften the language to reflect detainment.

At this stage, Madam Chairman recognised the time constraints and proposed that at the next meeting Ms. Belle would continue her presentation on the Child Justice Bill, 2023 and once concluded she would permit a half of an hour for any specific questions to be raised by the members.

Madam Chairman indicated that the next meeting would be facilitated by Zoom and instructed Deputy Clerk, Ms. Gibbons that the Committee should examine five (5) of the written submissions received to-date.

### ADJOURNMENT

There being no further business, on the motion of Hon. Corey A. Lane seconded by Sen. King the meeting was adjourned to Friday, September 8<sup>th</sup>, 2023 at 10:00 a.m.

Madam Chairman adjourned the meeting accordingly at 1:05 p.m.

  
Deputy Clerk of Parliament

Confirmed this 8<sup>th</sup> day of September 2023.

  
Chairman

PARLIAMENT OF BARBADOS  
(FIRST SESSION OF 2022 - 2027)

JOINT SELECT COMMITTEE (STANDING)  
ON SOCIAL SECTOR AND THE ENVIRONMENT

Minutes of the Second Meeting ('Hybrid') of the Joint Select Committee (Standing) on the review and examination of the Child Protection and Child Justice Bills, 2023, held in the Senate Chamber, Parliament Buildings, Trafalgar Street, Bridgetown, St. Michael on Friday, September 8<sup>th</sup>, 2023 at 10:00 a.m.

**PRESENT WERE:**

Ms. Toni N. S-A. Moore, J.P., M.P. (Chairman)  
Sen. John A. King  
Hon. Corey A. Lane, J.P., M.P.  
Sen. Dr. the Hon. Chelston W. DaC. Brathwaite, CHB, Ph.D.  
Miss Cynthia Y. Forde, J.P., M.P. (online)

**ABSENT:**

Mr. Trevor A. Prescod, J.P., M.P.  
Sen. Rev. Canon Dr. John A. Rogers, D.Th.

**IN ATTENDANCE WERE:**

Ms. Beverley S. Gibbons, *Deputy Clerk of Parliament*  
Mr. Nigel R. Jones, *Deputy Clerk of Parliament*  
Ms. Shawn R. Belle, *Chief Parliamentary Counsel (CPC)(Ag.)*  
Ms. Suzanne Hamblin, *Library Assistant (Journal Department)*  
Miss J'anne C. Greenidge, *Typist (Journal Department)*

**Item 1: Call to Order/Welcome by Chairman**

Madam Chairman called the meeting to order at 10:20 a.m. and welcomed everyone to the meeting.

**Item 2: Confirmation of the Minutes of the Meeting held on Friday, August, 25<sup>th</sup>, 2023**

The Minutes of the Meeting of Friday, August 25<sup>th</sup>, 2023 were taken as read and confirmed on the motion of Sen. John A. King seconded by Sen. Dr. the Hon. Chelston W. Dac Brathwaite.

**Item 3: Matters Arising**

There was none.

**Item 4: Continuation of the explanation of the Child Justice Bill, 2023 – Chief Parliamentary Counsel (Ag.), Ms. Shawn Raine Belle**

Ms. Shawn Raine Belle continued explaining and provided a summary of the Parts, Clauses and Schedules as are contained in the Child Justice Bill, 2023 (CJB).

Madam Chairman opened up the floor to the members to pose any question(s) to Ms. Belle.

Sen. Brathwaite raised a few notable concerns. He queried Part II, “Application for Criminal Responsibility”, Clause 5, “Age of criminal responsibility”: “*A child under the age of 12 years old is not capable of committing a criminal offence.*” He needed to be fully advised as to why it was not possible that a child under the age of 12 was not capable of committing a criminal offence. Ms. Belle explained that children under 12 years old would be dealt with under the Child Protection legislation since they are seen as not being accountable for their actions and did not possess the capacity to be considered responsible for criminal purposes. The Child



Protection legislation would also cover for instance, damage to property whereby the parents would be held liable to pay for those damages; and with more serious offences cases, the child would be detained in a residential facility.

With regard to Part X, “Secure Residential Facility”, Clause 91, “Discharge of child from a secure residential facility”; 91(1): “*The Director shall discharge a child from a secure residential facility where...*” Alternatively, Clause 92, “Discharge approval by Minister”: “*The Minister may approve the discharge of a child from a secure residential facility...*” He queried the Director’s and the Minister’s responsibility to discharge and opined that there may be a conflict as to who could discharge a child from a secure residential facility.

Ms. Belle explained to the Committee that Clause 91 provided the stipulations whereby the child could be released by the Director. Additionally, Clause 92 provided for an application to be made to the Minister who has discretion after examining the circumstances, to approve the discharge of the child who has served two-thirds of his sentence or the term of the order or the custodial portion of the sentence made by a magistrate or judge.

A discussion ensued with regard to Clause 92 and it was agreed that there needed to be some clarification in relation to who had the authority to make the application to the Minister. Ms. Belle committed to consulting with the pilot Ministry in terms of the policy on this matter.

Sen. King raised a concern in relation to Clause 86, “Misconduct”. He pointed out that the provisions of the Clause did not speak to a scenario where a child who is in a secure facility, injures, maims or kills a member of staff. Ms. Belle agreed and stated that the Bill did not speak to compensation for injury and so on. She committed that CPC would address such issues.

**Item 5: Examination of all Written Submissions**

The Committee examined the following written submissions: -

**(i) Family Faith Freedom Barbados (FFFB) – Mr. Hutson Inniss, Executive Director**

In FFFB’s submission, one of the concerns highlighted was the similarities within the Child Protection Bill, 2023 (CPB), Section 3(1)(a): “Purpose” and the CJB, 2023, Section 3: “Purpose” both of which basically provide to ensuring compliance with the various conventions, declarations, international instruments, standard minimum rules and guidelines. In the submission, it was also suggested that those provisions be removed as a precautionary measure because the inclusion thereof would commit the country to norms which may change to its detriment and beyond its control.

Ms. Belle explained that when Barbados ratifies a Treaty it has the legal obligation to recognise the rights contained therein and put in place domestic measures and legislation compatible with it. She stated that Barbados signed onto the Convention on the Rights of the Child on April 19<sup>th</sup>, 1990 which was ratified on 9<sup>th</sup> October, 1990. Thereafter, Barbados is committed to implementing said rights and therefore the Bills are only further recognition of that commitment. Notably, if there are changes to any treaty, Barbados reserves the right as a sovereign nation, to enter into reservations – a declaration purporting to exclude or alter the legal effect of specific provisions of a Treaty; or if there was a change in protocol within the Treaty, Barbados could also refuse to sign.

The committee agreed not to amend the Bills and therefore Section 3 would not be removed. It also agreed to FFFB’s request to make a ten (10) minute oral presentation and as such a date and time would be set for the members to examine this submission further.

**(ii) Mr. Vincent Smith**

Mr. Smith's submission to the Committee was in relation to the CPB, 2023. The basis for his submission was that "*Gender Affirming Care is medical abuse.*"

He stated that the CPB, 2023 lacked a crucial area of protection and proposed that "gender-affirming care" should not be administered to a person under 18 years of age and be an addition to the Bill 2023." His main concern was that "*children are being led down a path of gender confusion and identity crisis which is exploited and monetized by medical professionals.*"

Ms. Belle emphasised that with the CPB, 2023, care and protection was set out in Clause 5: "Child in need of care of protection" which formed the basis to address his concern of medical treatment and by extension care and responsibility. She explained that Clause 2 - "care and responsibility" authorises the authority to (a): "consent to the medical treatment not involving surgery..."; and (b): "consent to medical treatment involving surgery that a medical practitioner certifies in writing needs to be carried out as a matter of urgency..." Further, she explained Clause 2 - "delegated care responsibility" which authorises a child care centre to (a): "consent to medical treatment not involving surgery for the child on the advice of a medical practitioner..." Following on and taking everything into context, Clause 7 - "Participation of a child"; Clause 7(1): "A child shall be entitled to participate in a decision that is likely to have a significant impact on his life. She stated that there was a need to understand the nature of the medical treatment but assignment surgery would not fit into the circumstances as provided by the Bill.

Sen. King queried whether if the child was within a household instead of being in custody within a care facility and the parent argued that the gender-affirming surgery was urgent because of the child's mental state. Ms. Belle stated that this type of behaviour would be interpreted as child abuse causing Clause 5 of the Bill

to be triggered. Clause 24, “Mandatory reporting” provides for an obligation to report this type of abuse and would trigger an investigation in the circumstances.

The general consensus was that the legislation did not purport to address Mr. Smith’s concerns. Therefore, it was agreed by the Committee not to amend the CPB, 2023 to include the aforementioned submission.

**(iii) Ms. Norma Springer**

Ms. Springer’s submission mainly addressed her concerns with the different definitions of the child within the CJB, 2023 and CPB, 2023

She stated that: *“The Child Justice Bill reduces the age of criminal responsibility from “under 14 years to 12 years and 1 day”; and that “The Child Protection Bill has special Clauses for “a child under 12 years old.”*

Ms. Belle stated that there was some misunderstanding by Ms. Springer of the difference of ages between the two Bills. She explained that internationally, under the Convention on the Rights of the Child (CRC), a child is defined as a person under the age of 18 and as set out in Clause 2 of both Bills. She further explained that based on the CRC, the Cabinet of Barbados agreed that the age of responsibility was 12 and children under the age of 12 were not criminally responsible. She pointed out that in the CJB, 2023 the necessary consequential amendments are contained in the Sixth Schedule relative to the regularisation of age which are relevant to the child justice system. She concluded that with regard to the different ages of majority as submitted by Ms. Springer, some were generally taken within different contexts, areas of law, and subject matters, in comparison to the two Bills.

The Committee agreed that despite the different ages or definitions to treat to the age of the child, there is no real conflict between the two Bills because they both provide and define that a child is a person was under the age of 18.

**(iv) Operation Safe Space (OSS) – Mrs. Marsha Hinds-Myrie and Miss Anya Lorde**

OSS's submission basically stated that they were generally satisfied with the two Bills but offered some major concerns.

One of the concerns was found under the heading, "Bureaucracy". The submission is as follows: *"...both Bills were silent of a process of complaint and accountability measures to change the behaviour of officers. There are fines for the public but none for the officers who will be entrusted with affecting the laws. The recent experience of the Government Industrial School has revealed that whistleblower legislation that protects board actors and other stakeholders as they carry out their duties is important."* It was generally felt by the Committee that this concern was not applicable with respect to the two Bills.

All the submissions of OSS were focused on the operational problems and social ills within the society. Ms. Belle stressed that social ills could not be cured by legislation but pointed out that at Clause 6 in the CJB, 2023, "Principles to be applied when dealing with children". provides a set of standards for the way people to operate and Similarly, in the CPB, 2023 at Clause 4, "Principles to be applied in the administration of the Act."

Madam Chairman concluded that OSS's submissions did not request any amendments to the Bills but she took note and embraced the comments therein.

## ADJOURNMENT

There being no further business, on the motion of Sen. King seconded by Miss Cynthia Y. Forde the meeting was adjourned to Friday, September 15<sup>th</sup>, 2023 at 10:00 a.m.

Madam Chairman adjourned the meeting accordingly at 1:22 p.m.

  
**Deputy Clerk of Parliament**

Confirmed this 19<sup>th</sup> day of September 2023.

  
**Chairman**

**PARLIAMENT OF BARBADOS  
(FIRST SESSION OF 2022 - 2027)**

**JOINT SELECT COMMITTEE (STANDING)  
ON SOCIAL SECTOR AND THE ENVIRONMENT**

Minutes of the Third Meeting ('Hybrid') of the Joint Select Committee (Standing) on the review and examination of the Child Protection and Child Justice Bills, 2023, held in the Senate Chamber, Parliament Buildings, Trafalgar Street, Bridgetown, St. Michael on Friday, September 15<sup>th</sup>, 2023 at 10:00 a.m.

**PRESENT WERE:**

Ms. Toni N. S-A. Moore, J.P., M.P. (Chairman)

Sen. John A. King

Miss Cynthia Y. Forde, J.P., M.P.

Sen. Rev. Canon Dr. John A. Rogers, D.Th.

Mr. Trevor A. Prescod, J.P., M.P.

Sen. Dr. the Hon. Chelston W. DaC. Brathwaite, CHB, Ph.D.

**ABSENT:**

Hon. Corey A. Lane, J.P., M.P.

**IN ATTENDANCE WERE:**

Ms. Beverley S. Gibbons, *Deputy Clerk of Parliament*

Mr. Nigel R. Jones, *Deputy Clerk of Parliament*

Ms. Shawn R. Belle, *Chief Parliamentary Counsel (CPC)(Ag.)*

Miss J'anne C. Greenidge, *Typist (Journal Department)*

**Item 1: Call to Order/Welcome by Chairman**

Madam Chairman called the meeting to order at 10:07 a.m. and welcomed everyone.

**Item 2: Deferral of the Minutes of the Meeting held on Friday, September 8<sup>th</sup>, 2023**

The Minutes of the Meeting of Friday, September 8<sup>th</sup>, 2023 were deferred on the motion of Sen. John A. King seconded by Miss Cynthia Y. Forde.

**Item 3: Continuation of the Examination of Written Submissions:**

The Committee examined the following written submissions: -

**(i) Mr. Kammie “Mac” Holder – Father 4 Justice Barbados**

Mr. Kammie Holder’s submission to the Committee was grounded on the United Nations Convention on the Rights of the Child. Ms. Shawn Raine Belle provided a holistic overview of Mr. Holder’s submissions as follows:

- (a) *Article 3: Best Interests of the Child* – She referred to the Child Protection Bill, 2023 (CPB) and cited “Purpose” as set out in Clause 3(1)(e): “to ensure that the best interest of the child is given paramount considerations in all matters. She further cited Clause 3(2): “In determining what is in the best interest of the child, ... matters shall be taken into account:...” She stated that the provisions in the CPB would not act to prejudice any matters or the rights of a parent; father or a non-custodial parent. Moreover, the Child Justice Bill, 2023 (CJB) does not define the term but cited as an important consideration as provided under Clause 25(2): “A magistrate may exclude the parent of the child ... is not in the best interest of the child.”



- (b) *Article 4: Implementation of Rights* – She advised that this submission concerned visitation at schools and should therefore be addressed to the Ministry of Education, Technological and Vocational Training. It is not within the context of the CPB or the CJB.
- (c) *Article 8: Preservation of Identity* – She stated that nothing in the CPB or the CJB operates to rob a child of his identity.
- (d) *Article 9: Separation From Parents* – She mentioned that Mr. Holder’s concern was that “*All decisions to separate children from their parents must be made by the competent authorities*” was contemplating the ‘custody’ of a child. She stressed that the CPB promotes the retaining of relationships and cited Clause 4, “Principles to be applied in the administration of the Act”, (f)... (ii) “the child may retain relationships with people...” and in the CJB, Clause 6, “Principles to be applied when dealing with children”, (3): “*A child who is detained under this Act ...*”, (b): “*shall have the right ...*” speaks to where a child is detained and the reasonable number of visits by a parent.
- (e) *Article 12: Right to be Heard* – She referred to the CPB and cited Clause 7, “Participation of a Child” which makes provisions for a child to participate in the decisions affecting him or her. Similarly, in the CJB, under Clause 6 (as mentioned previously), (1): “The Court or person ... shall be guided by the following principles:” (b): “a child shall, ... be given an opportunity to respond before any decision is taken which affects the child.”
- (f) *Article 13: Freedom of Expression* – Ms. Belle stated that this is protected under the CPB, pursuant to Clause 7, “Participation of a Child”, (2): “In order to ensure that a child is able to participate in a decision ...”, (b): “the opportunity to freely express his views ...” Similarly, the CJB preserves the right to expression pursuant to Clause 6(1)(b) (as mentioned previously).

- (g) *Article 16: Right to Privacy* – She informed the Committee that this matter needed to be dealt with in other pieces of legislation.
- (h) *Article 18: Parental Responsibilities* – She stated that this concern should also be dealt with in other pieces of legislation.
- (i) *Article 27: Right to an Adequate Standard of Living* – This concern should also be dealt with in other pieces of legislation.
- (j) *Article 40: Administration of Juvenile Justice* – Notwithstanding that his concern should be dealt with in other pieces of legislation, the CJB seeks to put a system in place that is specifically designed to speak to children in conflict with the law. As such, the CJB upholds Article 40.

The Committee agreed that Mr. Holder's submissions warranted no amendments to the CPB or the CJB.

**(ii) Mr. Victor Hoppin Justice Barbados (2 submissions)**

Mr. Victor Hoppin's first submission was concerned with the proposed three (3) and six (6) months' time frame in which serious family matters are dealt within the Bills. Ms. Belle indicated that the timelines were in line with the international norms that are supposed to be applied in such cases and are seen as being in the best interest of the child.

In his second submission, his main concern was the policy and process of diversion within the criminal justice system. He suggested that once the young offender goes before the Magistrate and thereafter, it will be determined whether the matter would be dealt with by the Board. He stated that this process was not diversion but purely a deviation from the Magistrate Court and proposed that "*A true policy of diversion will see an appearance being made first before the Board*".

Ms. Belle referred to CJB, Part V – “Initial Inquiry and Diversion” and more particularly, Clauses 33 to 39 which speaks to diversion. She stressed that diversion will usually occur within the initial inquiry and cited Clause 24, “Nature and objectives of an initial inquiry”, (2): “The appearance of a child at an initial inquiry before a magistrate shall be the equivalent of a first appearance before a Court.” She explained that this would not be regarded as court procedure *per se* and based on the provisions, it is a problem-solving type of mechanism within informal proceedings.

She highlighted Clause 38 in the CJB: “Failure to comply with diversion direction”, (1): “Where a child fails to comply with a diversion option, a magistrate shall, on being notified of such failure in the prescribed manner, issue .... or (b) **“a written notice to the child to appear before a magistrate.”** An issue was raised in relation to the language of Clause 38(1)(b) and after some discussion, Ms. Belle indicated that CPC would modify it so that it is clearer as to the responsibilities with the inclusion of references to confer back to earlier provisions.

She concluded that Diversion is dealt with in extreme detail in the CJB and disagreed with what Mr. Hoppin had put forward in his submissions. The Committee however agreed that the parent Ministry should consider that there may be some validity in examining another model to effect diversion.

**(iii) Chief Probation Officer (Ag.), Probation Department**

The Probation Department as one of the key stakeholder agencies submitted to the Committee that they did not have any challenges and supported the composition of the CPB, 2023 and the CJB, 2023.

**(iv) Dr. Veronica C. Evelyn, Consultant Sociologist**

Dr. Veronica C. Evelyn's submissions were with regard to the CPB, 2023 and her areas of main concern were 1) The purpose of the Bill, 2) The language of the Bill and 3) The lack of definition of important concepts.

Ms. Belle responded as follows:

1) The purpose of the Bill – Clause 3. She indicated that this submission was an error of interpretation of the purpose of the Bill;

2) The language of the Bill. She explained how the Bills are interpreted and referred to Clause 2 which sets out specific interpretation of specific phrases and that may also take on its ordinary dictionary meaning; and

3) Undefined Concepts. She had previously explained “the best interest of the child” pursuant to Clause 3(2). In relation to “*powers, responsibilities and obligations that by law a parent has in relation to a child.*” Here, the understanding of the word “law” cannot be used as a broad term but specific in relation to a child. Additionally, the terms outlined should be understood within a context of the child's best interest.

Dr. Evelyn's was also gravely concerned about gender-affirming surgery and queried whether the “*consent to the medical treatment involving surgery that a medical practitioner certifies in writing needs to be carried out as a matter of urgency and in the best interest of the child.*” Ms. Belle explained that there would be medical decisions involving and not involving surgery. As such, gender assignment was an elective surgery and would be characterised as abuse under the legislation. Therefore, such a concern is not contemplated in both Bills.

The Committee agreed to Dr. Evelyn's request to appear to make an oral presentation. Therefore, her written submission was deferred until then.

**(v) Barbados Council for the Disabled (BCD)**

The BCD recommended that *“the final documents be more inclusive by being more contextual, e.g., adding the words “children with disabilities” wherever examples of service to recipients are provided in the Bills.”*

The Committee agreed that a letter be written to the BCD querying specifically where they would want to see the expansion or the inclusion relative to *“children with disabilities”* within both Bills.

**(vi) Mr. Junior Campbell – Intelek International**

The Committee noted his concerns which were not pertaining to the two Bills.

**Item 4: Any other Business**

Madam Chairman indicated that the following would make oral presentations before the Committee:

- 1) Professor Simona Canepa, Chile;
- 2) Mr. Hutson Inniss, Family-Faith-Freedom Barbados;
- 3) Ms. Roseann Richards, Director, Care Board;
- 4) Mrs. Kaye Williams, President of the Barbados Bar Association; and
- 5) Dr. Veronica Evelyn, Consultant Sociologist

It was agreed by the Committee that each presenter would be allowed fifteen (15) minutes to make their oral submissions followed by a thirty (30) minute question and answer session. It was also agreed that a motion could be put by a member to have the time extended by fifteen (15) minutes. One-hour blocks would be provided for each presenter. The dates agreed for

the oral presentations which would be live streamed were Tuesday, September 19<sup>th</sup>, 2023 and Tuesday, September 26<sup>th</sup>, 2023. Examination of the Bills, Clause by Clause would begin on Tuesday, September 26<sup>th</sup>, 2023 and conclude on October 3<sup>rd</sup>, 2023.

### ADJOURNMENT

There being no further business, on the motion of Sen. Rev. Canon Dr. John A. Rogers seconded by Sen. John A. King the meeting was adjourned to Tuesday, September 19<sup>th</sup>, 2023 at 10:00 a.m.

Madam Chairman adjourned the meeting accordingly at 1:30 p.m.

  
Deputy Clerk of Parliament

Confirmed this 3<sup>rd</sup> day of October 2023.

  
Chairman

**PARLIAMENT OF BARBADOS  
(FIRST SESSION OF 2022 - 2027)**

**JOINT SELECT COMMITTEE (STANDING)  
ON SOCIAL SECTOR AND THE ENVIRONMENT**

Minutes of the Fourth Meeting ('Hybrid') of the Joint Select Committee (Standing) on the review and examination of the Child Protection and Child Justice Bills, 2023, held in the Senate Chamber, Parliament Buildings, Trafalgar Street, Bridgetown, St. Michael on Tuesday, September 19<sup>th</sup>, 2023 at 10:00 a.m.

**PRESENT WERE:**

Ms. Toni N. S-A. Moore, J.P., M.P. (Chairman)  
Sen. John A. King  
Miss Cynthia Y. Forde, J.P., M.P.  
Hon. Corey A. Lane, J.P., M.P. (online)  
Sen. Rev. Canon Dr. John A. Rogers, D.Th.  
Sen. Dr. the Hon. Chelston W. DaC. Brathwaite, CHB, Ph.D.

**ABSENT:**

Mr. Trevor A. Prescod, J.P., M.P.

**IN ATTENDANCE WERE:**

Hon. Wilfred A. Abrahams, M.P., Minister of Home Affairs, Information and Public Affairs  
Hon. Kirk D.M. Humphrey, M.P., Minister of People Empowerment and Elder Affairs, (MPEA)  
Mr. Jehu Wiltshire, Permanent Secretary, (MPEA)  
Ms. Beverley S. Gibbons, *Deputy Clerk of Parliament*  
Mr. Nigel R. Jones, *Deputy Clerk of Parliament*

Ms. Shawn R. Belle, *Chief Parliamentary Counsel (CPC)(Ag.)*

Miss J'anne C. Greenidge, *Typist (Journal Department)*

**Item 1: Call to Order/Welcome by Chairman**

Madam Chairman called the meeting to order at 10:05 a.m. and welcomed everyone.

**Item 2: Confirmation of Minutes of the Meeting held on Friday, September 8<sup>th</sup>, 2023**

The Minutes of the Meeting of Friday, September 8<sup>th</sup>, 2023 were taken as read and were confirmed on the motion of Sen. Rev. Canon Dr. John A. Rogers seconded by Sen. John A. King.

**Item 3: Matters Arising**

There were none.

**Item 4: Deferral of Minutes of the Meeting held on Friday, September 15<sup>th</sup>, 2023**

The Minutes of the meeting of Friday, September 15<sup>th</sup>, 2023 were deferred on the motion of Sen. Rev. Canon Dr. John A. Rogers seconded by Sen. John A. King.

**Item 5: Oral Presentations and Examination:**

The Committee received the following oral presentations which were lived streamed: -

**(i) Dr. Veronica C. Evelyn, PhD, Certified Sociologist**

The Committee had decided at its Third Meeting on Friday, September 15<sup>th</sup>, 2023 to invite Dr. Evelyn to make an oral presentation based on her previous written submissions.

Dr. Evelyn who was accompanied by Mrs. Jennifer Edwards submitted that the Child Protection Bill, 2023 (CPB) was unacceptable in its present form and



believed that it formed part of the re-visioning and the reshaping of Barbados as a new Republic to embrace human sexuality and sexual orientation.

Her three main areas of concern in relation to the CPB were 1) the purpose of the Bill, 2) the language of the Bill and, 3) the lack of clarity of definitions of critical words and phrases within the Bill.

According to her, the primary purpose of the CPB should be to ensure the wellbeing of Barbadian children and not to ensure compliance with the United Nations (UN) and other international instruments as provided by Clause 3(1) of the Bill.

In relation to the language of the Bill, she stated that depending on one's perspective, it may produce different interpretations relative to the concept of sexual orientation. She recommended that the language be revisited to pre-empt unintended interpretations that would be inimical to the wellbeing of our children and our country. She however urged Government to reconceptualise the purpose of the CPB; review and revise its language in order that the Bill's provisions be consistent with an informed well-reasoned national stance on sexual orientation.

Finally, with regard to the lack of clarity of definitions she identified a few critical words and phrases as defined by Clauses 3(1) and 3(2); and Clause 5(1). She reiterated that she believed that in the absence of clear definitions the Bill would be open to tailored interpretations.

Ms. Shawn R. Belle responded that the Interpretation Act, Cap. 1, Law Revision Act, Cap. 2, Law Reform (Miscellaneous Provisions) Act, Cap. 205, the Constitution of Barbados and common law decisions formed part of the insight for the interpretation of the CPB.

Ms. Belle explained that to fully understand the purpose of the Bill and ensuring compliance with the UN and other international instruments the entire Clause 3 and

the term “*best interest of the child*” as defined by Clause 2 would have to be taken into account together with the care and protection of a child as articulated in Clause 5.

It was concluded by the Committee that Dr. Evelyn’s concerns as articulated were not reflected in the Bill as it did not speak to the State allowing gender assignment or making determinations on sexual orientation.

**(ii) Child Care Board (CCB) – Ms. Roseann Richards, Director**

Ms. Roseann Richards, Director, Child Care Board introduced her team before making her presentation to the Committee.

Ms. Richards made various recommendations and concerns relative to the CPB.

In responding to the recommendations, Ms. Belle noted that in relation to changing the term “*Child Care Centre*” to “*Child Protection Facilities*” throughout the Bill would be possible once approval is given by the parent Ministry.

She indicated that in defining the words “*abandonment*” and “*desertion*” in Clause 5(e) the ordinary dictionary meanings would take. However, the proposed time frame to be included for desertion was a policy issue and should be directed to the parent Ministry. In Clause 5(f), the removal of the word “*moral*” was another policy issue which should be communicated to the Ministry.

Ms. Richards raised a concern relative to the words “*does not, or refuses to, obtain treatment; or*” as used in Clause 5(h)(i). As regards to the hospitalisation of a child, she needed clarity on the responsibility of the Queen Elizabeth Hospital and the CCB. Ms. Belle noted that consideration should be given within the context in which the State would intervene based on care and protection of the child. If another entity was needed, again, a decision would have to be made by the Ministry.

Ms. Richards cited Clause 31 and recommended that in Clause 31(1) the word “*may*” should be replaced with “*shall*”: “*the Director may, if necessary with the assistance of a police officer, ...*” After some discussion, the committee decided that the language of Clause 31(1) should remain.

The Committee agreed that in Clause 29(6), the word “*plan*” would be inserted after the word “*care*”: “*Where a care plan is developed pursuant to subsection (2)(b) that care plan...* ”.

In relation to the recommendation made regarding Clause 33, Ms. Belle noted that to introduce catering for children with “*extreme behaviours*” was a new limb. She added that Clause 5 and Clause 33 would have to be amended to reflect that and this would be a policy decision.

Ms. Richards also made various recommendations and concerns relative to the Child Justice Bill, 2023 (CJB)

Ms. Belle informed the Committee that the word “*beliefs*” in Clause 6(1)(d) takes on the ordinary dictionary meaning to contemplate a wide interpretation as possible and in order to consider the many beliefs that persons may have.

With regard to the use of the phrase “*secure residential facility*” throughout the CJB, Ms. Belle indicated that it is clearly defined pursuant to Clause 2 and fully described and interpreted in accordance with Clause 68.

Finally, in relation to the recommendation that timelines should be identified for the execution of the Court Orders by officers, Ms. Belle explained that Clause 114 states that, “*This Act comes into force on a date to be fixed by proclamation.*” This would give the Minister time to make the necessary regulations in relation to specific areas of the Bill.

Madam Chairman queried the previous written submission relative to the application of the mechanism of Diversion as articulated in the Child Justice Bill,

2023. A discussion ensued and it was agreed that further consideration should be given to it as a policy decision by the Ministry.

**(iii) Barbados Bar Association (BBA)**

The BBA was represented by Attorneys-at-Law, Mrs. Kaye Williams, President, Ms. Margo Greene, SC, and Mrs. Peta-Gay Lee-Brace.

The Chairman pointed out that the Committee did not receive any previous written submission.

After the formal introductions, Ms. Greene began the presentation to the Committee with regard to the CPB. However, due to time constraints, the Chairman interjected and requested that a written submission should be submitted for the benefit of Ms. Belle and members of the Committee by Thursday, September 21<sup>st</sup>, 2023 and no later than 4:00 p.m.

It was agreed that the BBA would reappear before the Committee on Tuesday, September 26<sup>th</sup>, 2023 at 12: 45 p.m.

**Item 6: Any other Business**

There was none.

## ADJOURNMENT

There being no further business, on the motion of Sen. John A. King seconded by Sen. Rev. Canon Dr. John A. Rogers the meeting was adjourned to Tuesday, September 26<sup>th</sup>, 2023 at 10:00 a.m.

Madam Chairman adjourned the meeting accordingly at 1:40 p.m.

  
Deputy Clerk of Parliament

Confirmed this 20<sup>th</sup> day of February 2024.

  
Chairman



**PARLIAMENT OF BARBADOS  
(FIRST SESSION OF 2022 - 2027)**

**JOINT SELECT COMMITTEE (STANDING)  
ON SOCIAL SECTOR AND THE ENVIRONMENT**

Minutes of the Fifth Meeting ('Hybrid') of the Joint Select Committee (Standing) on the review and examination of the Child Protection and Child Justice Bills, 2023, held in the Senate Chamber, Parliament Buildings, Trafalgar Street, Bridgetown, St. Michael on Tuesday, October 3<sup>rd</sup>, 2023 at 10:00 a.m.

**PRESENT WERE:**

Ms. Toni N. S-A. Moore, J.P., M.P. (Chairman)

Sen. John A. King

Miss Cynthia Y. Forde, J.P., M.P.

Mr. Trevor A. Prescod, J.P., M.P.

Hon. Corey A. Lane, J.P., M.P.

Sen. Rev. Canon Dr. John A. Rogers, D.Th.

**EXCUSE OF ABSENCE:**

Sen. Dr. the Hon. Chelston W. DaC. Brathwaite, CHB, Ph.D.

**IN ATTENDANCE WERE:**

Ms. Beverley S. Gibbons, *Deputy Clerk of Parliament*

Mr. Nigel R. Jones, *Deputy Clerk of Parliament*

Ms. Shawn R. Belle, *Chief Parliamentary Counsel (CPC)(Ag.)*

Miss J'anne C. Greenidge, *Typist (Journal Department)*

**Item 1: Call to Order/Welcome by Chairman**

Madam Chairman called the meeting to order at 10:35 a.m. and welcomed all.

**Item 2: Confirmation of Minutes of the Meeting held on Friday, September 15<sup>th</sup>, 2023**

The Minutes of the Meeting of Friday, September 15<sup>th</sup>, 2023 were taken as read and were confirmed on the motion of Sen. John A. King seconded by Sen. Rev. Canon Dr. John A. Rogers.

**Item 3: Matters Arising**

There were none.

**Item 4: Deferral of Minutes of the Meeting held on Tuesday, September 19<sup>th</sup>, 2023**

The Minutes of the meeting of Friday, September 19<sup>th</sup>, 2023 were deferred on the motion of Sen. John A. King seconded by Hon. Corey A. Lane.

**Item 5: Oral Presentations and Examination:**

The Committee received the following oral presentations which were lived streamed: -

**(i) Family-Faith-Freedom Barbados (FFFB)**

The Committee extended an invitation to FFFB to make an oral presentation after receiving their previous written submission.

Mr. Hutson Inniss, Executive Director introduced his team: Mrs. Davida Maynard-Holligan, Attorney-at-Law and Community Outreach Officer, and Reverend Carl Barker, Immediate Past Vice Chairman to the Committee.



Mrs. Davida Maynard-Holligan began the presentation by primarily examining the “Purpose” of the Child Protection Bill, 2023 (CPB) and the Child Justice Bill (2023) on behalf of FFFB.

She cited Clause 3(1)(a) of the CPB and Clause 3 of the CJB and stated that the primary purpose in both Bills is to ensure compliance with not only specific Treaties listed in the Bills but with all international instruments to which Barbados is a party, some of which support rights associated with sexual orientation, gender identity and sexual transitioning. She stressed that even though the CPB and CJP does not speak to sexual transitioning, she believed that it could be utilised for this purpose. She recommended, for instance, that in the CPB, Clause 3(1)(b) to 3(1)(e) ought to be the sole purpose of the Bill.

Ms. Belle responded that if Clause 3(1)(a) of the CPB and the corresponding Clause 3 of the CJB were removed, Barbados would still be bound by those international conventions because we are a signatory to them. As a sovereign State, we have the right to make a reservation so as not to be bound. Those conventions represent the standards in relation to child protection and moreover to a child in need of care and protection as set out in Clause 5 of the Bill. Additionally, the purpose of the conventions and all the other instruments within the context of the Bills, the primary purpose, is to serve the best interest of the child.

**(ii) Democratic Labour Party (DLP)**

The DLP was represented by Ms. Felicia Dujon, Third Vice President and Ms. Tyra Trotman, Attorney-at-Law and a member of the Young Democrats.

Ms. Dujon led off the presentation with the DLP’s major concerns on the CPB, based on their written submission.

She opined that the language used in the CPB is ambiguous and needed more clarity especially in extreme circumstances whereby a minor is removed from his or her home. Additionally, she argued that the Bill creates more foster homes and child

care centres but it neglected to address the issue of pre-qualifications of the children for placement within the said facilities. Ms. Shawn R. Belle gave a balance to the argument by referring to the application of the principles in the administration of CPB as per Clause 4(f) and the removal of a child by the Director as articulated in Clause 31.

Another important concern of the DLP was that the CPB undermines parental rights as it seems to replace the authority of the parent by the authority of the Director. She opined that parental rights and responsibilities are separate legal entities and therefore cannot be overridden by the State.

Ms. Belle reiterated for the benefit of the DLP that the jurisdiction of the legislation speaks to the children in need of care of protection as articulated in Clause 5 of the CPB which she expounded on. She noted that the word "*moral*" in Clause 5(1)(f) will be deleted. She further provided a wholistic view of the Bill based on the circumstances whereby the child is in need of care and protection. She added some guidance, and clarification on certain provisions and child protection procedures to the discussion. She indicated that CPB must be taken as a whole and not in parts and that the provisions work in tandem together.

Another notable concern raised by Ms. Dujon was the application of penalties relative to certain offences. She mentioned that in relation to cruelty to children pursuant to Clause 61, the person, "*is guilty of an offence and is liable on summary conviction to a fine of \$100,000 or to imprisonment for a term of 10 years or to both.*" In this regard, she believed that the State exonerates itself.

Ms. Belle responded that the Interpretation Act, Cap. 1 speaks to the fact that it expresses statutory penalties in the maximum and was discretionary. She validly made the point that "*person*" also captures the abuses that could be put in relation to the State.

Ms. Trotman concluded the DLP's presentation by highlighting the word "jurisdiction" which was used within the context of those children in need of care

and protection in the Bill. She further expounded on the Bill's language and referred to the Long Title: "*An Act to make provision for the reform of the law on the care and protection of children*" which she believed was very general and wide in its interpretation. She recommended that a few words be inserted to cure the mischief in the language.

Ms. Belle noted her recommendation and was amenable to make such an amendment so that there would be more clarity to the Long Title of the CPB.

**(i) Barbados Bar Association (BBA)**

The BBA was again represented by Attorneys-at-Law, Mrs. Kaye Williams, President, Ms. Margo Green, SC, and Mrs. Peta-Gay Lee-Brace.

Ms. Green lead off the presentation based on BBA's written submission with regard to the CPB. She made several recommendations to the Committee.

One such recommendation was in relation to the definition of "*financial abuse*" as set out in Clause 2. She proposed that the said definition be expanded and should include identity theft. Ms. Belle noted and took the submission into consideration.

Another proposed recommendation was to make an amendment to the definitions of "*physical abuse*" and "*verbal abuse*" defined in Clause 2, by excluding the words, "*omission*" and "*silence*". Ms. Belle stated that she would revisit both words and agreed that they would be dealt with separately in the Bill.

The recommendation in relation Clause 7(4) which addresses a child's entitlement to legal representation by an attorney-at-law and payment *via* legal aid was accepted. Ms. Belle proposed that consequential amendments to the Community Legal Services Act, Cap.112A would be provided for in the Second Schedule of the Bill.

Ms. Belle addressed the recommendation in relation to Clauses 24 (1) and (5) which speak to "Mandatory reporting" and the exception provided for "*attorney-client privilege*" respectively. It was also queried whether that said exception could be

extended to Catholic priests and the confessional seal; and she indicated to the Committee that to extend client privilege to doctors and Catholic priests and the confessional seal should be properly ventilated and discussed at the policy level.

In relation to Clause 38(1) which speaks to “*Care plan*”, the recommendation to include a reference to a psychologist or a psychiatrist was taken into consideration but it would have to be a policy decision made by the parent Ministry.

Finally, Clause 42, “*Custody Care Order*” whereby the recommendation was that “*custody*” and “*care*” were two separate concepts and should therefore be defined separately within in the Bill; It was agreed that a new definition for “Custody Care Order” would be inserted in Clause 2.

The Chairman thanked the BBA for their participation.

#### **SUPENSION**

On the motion of Hon. Corey A. Lane seconded by Sen. John A. King the meeting was suspended at 2:00 p.m. until 3:00 pm.

#### **RESUMPTION**

The Chairman resumed the meeting at 3:33 p.m.

#### **Item 6: Examination of the Child Protection Bill, 2023 – Clause by Clause:**

The Chairman proceeded to examine the CPB and the below reflects the Committee’s agreement on the amendments.

“Objects and Reasons”, preamble reflecting the Long title, should now read: “*This Bill makes provision for children in need of care and protection.*”

## PART I – PRELIMINARY

“Interpretation”.

Clause 2:

*“verbal abuse”*

“(a)” In the definition, *“silence”* would be removed and addressed separately as a form of abuse. A definition for “Non-verbal abuse” was proposed but *“silence”* was flagged to be reverted to by Ms. Belle after consultation with the stakeholders and the parent Ministry.

The Committee agreed to the insertion of a definition for *“custody care order”*: *““custody care order” means an order made under Section 42”, to be inserted after the definition of “court”*.

In relation to *“physical abuse”* the words *“or omission”* to be deleted from the definition. The definition of “omission” was flagged as it was a policy direction to be reverted to by Ms. Belle.

With respect to *“financial abuse”*, the definition to be expanded to include certain concepts such as identity theft, earnings, inheritance, monetary sums or property that are to be given for the benefit of the child. Consequently, the definition of *“abuse”* to be amended.

In Clause 3(1)(c) – “Purpose of the Act” was amended and should now read: *“provide for a child in need of care and protection in accordance with section 5”*. A discussion ensued with regard to deleting or rearranging the paragraphs under Clause 3(1)(a)(i)-(iii) and (b)-(e). It was decided that the parent Ministry should make that decision.

In Clause 5(1)(f) the word *“moral”* to be deleted and should now read: *“has been exposed to danger or otherwise”*; and in Clause 5(1)(m) delete the words *“section 39”* and substitute with the words *“section 40”*.

Ms. Belle reminded the Committee of the decision that Clause 7(4) should address the consequential amendments to the Community Legal Services Act, Cap. 112A (CLSA) in the Second Schedule of the CPB. It would be inserted and the CLSA would include proceedings under the CPB, so that provision would be made for payment by the State to the attorney-at-law.

### **PART III – INTERVENTIONS, REPORTS AND INVESTIGATIONS**

In relation to “Mandatory reporting” as set out in Clauses 24(1)(b) and (5) which addresses “*attorney-client privilege*” as previously stated, the Committee discussed whether to delete “*medical practitioner*” and to extend the exception of privilege to the medical practitioner-patient relationship; and also to Catholic priests to include the confessional seal. The Committee agreed that these issues would be referred to the parent Ministry for a decision.

“Approved child care centres”, Clause 53 was amended to read: “*The Minister may grant approval for child care centres ...*”. “*Purpose of approved child care centre*”, Clause 54(2) was amended to read: “*The staff of the approved child care centre...*”

Clause 59(2) which reads, “*A person who imposes corporal punishment, severe or frightening measures on a child ...*” should *inter alia* be further elucidated for clarity, that is, what is “*severe or frightening*”. This would be dealt with at the policy level with the parent Ministry and would also apply to the CJB, 2023.

### **PART VII – MISCELLANEOUS**

“Repeal and savings”, Clause 68(1)(b) was amended to read: “*the Prevention of Cruelty to Children Act, Cap. 145;*”.

#### **FIRST SCHEDULE (Constitution and Procedure of the Child Protection Board)**

Paragraph 2, Subheading “*Temporary appointment of Board*” was amended by deleting the words “*of Board*” and should now read “*Temporary appointment*”.

#### **SECOND SCHEDULE (Consequential Amendments)**

Ms. Belle reminded the Committee as discussed previously that the Second Schedule of the Bill will be amended to include an amendment to the Community Legal Services Act, Cap. 112A.

The Chairman referenced the further submission received from the Barbados Council for the Disabled which recommended that wherever possible the word “*child*” referenced in the CPB, 2023 and CJB, 2023 would mean “*includes/including child with a disability*”. The Committee agreed that the Regulations for both Bills should further expand on this subject matter.

There being no further consideration of the Clauses of the CPB, 2023, the Committee concluded its examination.

### ADJOURNMENT

There being no further business, on the motion of Sen. John A. King seconded by Sen. Rev. Canon Dr. John A. Rogers the meeting was adjourned to Friday, October 6<sup>th</sup>, 2023 at 10:00 a.m.

Madam Chairman adjourned the meeting accordingly at 6:08 p.m.

  
**Deputy Clerk of Parliament**

Confirmed this 20<sup>th</sup> day of February 2024.

  
**Chairman**





**PARLIAMENT OF BARBADOS  
(FIRST SESSION OF 2022 - 2027)**

**JOINT SELECT COMMITTEE (STANDING)  
ON SOCIAL SECTOR AND THE ENVIRONMENT**

Minutes of the Sixth Meeting ('Hybrid') of the Joint Select Committee (Standing) on the review and examination of the Child Protection and Child Justice Bills, 2023, held in the Senate Chamber, Parliament Buildings, Trafalgar Street, Bridgetown, St. Michael on Friday, October 6<sup>th</sup>, 2023 at 10:00 a.m.

**PRESENT WERE:**

Ms. Toni N. S-A. Moore, J.P., M.P. (Chairman)

Sen. John A. King

Miss Cynthia Y. Forde, J.P., M.P.

Hon. Corey A. Lane, J.P., M.P. (online)

Sen. Rev. Canon Dr. John A. Rogers, D.Th. (online)

**EXCUSE FOR ABSENCE:**

Sen. Dr. the Hon. Chelston W. DaC. Brathwaite, CHB, Ph.D.

**ABSENT:**

Mr. Trevor A. Prescod, J.P., M.P.

**IN ATTENDANCE WERE:**

Ms. Beverley S. Gibbons, *Deputy Clerk of Parliament*

Mr. Nigel R. Jones, *Deputy Clerk of Parliament*

Ms. Shawn R. Belle, *Chief Parliamentary Counsel (CPC)(Ag.)*

Miss J'anne C. Greenidge, *Typist (Journal Department)*

**Item 1: Call to Order/Welcome by Chairman**

The meeting was called to order by Madam Chairman at 10:45 am due to technical difficulties. She welcomed all.

**Item 2: Deferral of the Minutes of the Meeting held on Tuesday, October 3<sup>rd</sup>, 2023**

The Minutes of the Meeting of Tuesday, October 3<sup>rd</sup> were deferred on the motion of Sen. John A. King seconded by Hon. Corey A. Lane.

**Item 3: Examination of the Child Justice Bill, 2023 – Clause by Clause:**

The Committee examined the Child Justice Bill, 2023 (CPB).

The Committee made no amendments to **PARTS I** through **III** of the Bill.

**PART IV – SECURING ATTENDANCE OF A CHILD AT INITIAL INQUIRY**

Clause 22, “Death injury or illness of a child in policy custody” was amended by deleting the word “policy” and substituting the word “police” and now reads: “Death injury or illness of a child in police custody.

**PART V – INITIAL INQUIRY AND DIVERSION**

The Committee had significant discussions with regard to the policy and process of diversion and agreed that the concerns should be brought to the attention of the parent Ministry for advice especially as it relates to a child appearing before a Magistrate of the Court.

Clause 34, “Purposes of Diversion”, the Committee highlighted paragraphs (g) and (h) for the attention of the parent Ministry so that further decisions could be made relative to the mechanism of Diversion.

## **PART VI – COURT PROCEEDINGS**

At the end of Clause 42(1), the words *“in a manner that can be understood by a child”* to be in regular font rather than bold.

The Committee made no amendments to **PART VII, PART VIII** and **PART IX**.

## **PART X – SECURE RESIDENTIAL FACILITY**

Clause 68, “Secure residential facility”. In Clause 68(a)(iv) the words “a term of imprisonment” were deleted and replaced with the word “detention” and now reads: *“reception and rehabilitation of a child who has been sentenced to detention under this Act”*.

Clause 87, “Power of the Director to impose discipline on a child in a secure residential facility”. In Sub-clause (1), the words *“severe or frightening measures”* would be defined in Definition Clause 2.

Clause 92, “Discharge approval by Minister”. The Committee agreed that this would be referred to the parent Ministry to reconsider the Minister’s powers and to establish the full articulation and policy direction on this matter.

The Committee made no amendments to **PARTS XI and X**; and through to the **FIRST** to the **THIRD SCHEDULE**.

## **FOURTH SCHEDULE**

Paragraph 6, “First meeting” was deleted and the following paragraphs renumbered consequentially.

## **FIFTH SCHEDULE**

Paragraph 7, “Minutes”, the Committee agreed that the paragraph be amended by CPC to include a two-week timeline for the submission of the Minutes of the meetings of the Reintegration Board.

The Committee made no amendments to the **SIXTH SCHEDULE**.

There being no further consideration of the Clauses and Schedules of the CJB, 2023, the Committee concluded its examination.

### **Item 4: Any other business**

Madam Chairman indicated that the next stage for the Committee would be the compilation of the Report which should be made available by Tuesday, October 31<sup>st</sup>, 2023. She also indicated that based on the discussions, the parent Ministries would have to make decisions on the policy directives approval, so that Ms. Shawn R. Belle could make the necessary amendments and changes to the respective Bills.


She thanked the Members of the Committee “for being very focused and steadfast” with the work of the Committee and also thanked the members of the public and all those who submitted their written submissions and made oral presentations.

She expressed gratitude to CPC and thanked Ms. Belle for her patience and advice given to the Committee. She also thanked the staff of Parliament for the work they had done in support of the Committee.

## **ADJOURNMENT**

There being no further business, on the motion of Sen. John A. King seconded by Hon. Corey A. Lane the meeting was adjourned *Sine die*.

Madam Chairman adjourned the meeting accordingly at 11:52 a.m.

  
**Deputy Clerk of Parliament**

Confirmed this 20<sup>th</sup> day of February 2024.

  
**Chairman**



PARLIAMENT OF BARBADOS  
(FIRST SESSION OF 2022 - 2027)

JOINT SELECT COMMITTEE (STANDING)  
ON SOCIAL SECTOR AND THE ENVIRONMENT

Minutes of the Seventh Meeting ('Hybrid') of the Joint Select Committee (Standing) on the review and examination of the Child Protection and Child Justice Bills, 2023, held in the Senate Chamber, Parliament Buildings, Trafalgar Street, Bridgetown, St. Michael on Friday, February 16<sup>th</sup>, 2024 at 10:00 a.m.

**PRESENT WERE:**

Ms. Toni N. S-A. Moore, J.P., M.P. (Chairman)

Sen. John A. King

Her Honour Cynthia Y. Forde, J.P., M.P.

Hon. Corey A. Lane, J.P., M.P. (online)

**ABSENT:**

Mr. Trevor A. Prescod, J.P., M.P.

Sen. Rev. Canon Dr. John A. Rogers, D.Th

**IN ATTENDANCE WERE:**

Hon. Kirk D. M. Humphrey, M.P., *Minister of People Empowerment and Elder Affairs*

Ms. Beverley S. Gibbons, *Deputy Clerk of Parliament*

Ms. Shawn R. Belle, *Chief Parliamentary Counsel (CPC)(Ag.)*

Miss J'anne C. Greenidge, *Typist (Journal Department)*

**Item 1: Call to Order/Welcome by Chairman**

Madam Chairman called the meeting to order at 11:15 a.m. and welcomed all.

**Item 2: Confirmation of the Minutes of the Meetings held on September 19<sup>th</sup>, October 3<sup>rd</sup>, and October 6<sup>th</sup>, 2023**

The Committee agreed that the aforementioned Minutes be deferred until the next the meeting.

The Minutes of the Meetings of September 19<sup>th</sup>, October 3<sup>rd</sup>, and October 6<sup>th</sup>, 2023 were deferred on the motion of Sen. John A. King seconded by Her Honour Cynthia Y. Forde.

**Item 3: Consideration and approval of the Amendments of:**

**(i) The Child Protection Bill, 2023 (CPB)**

**OBJECTS AND REASONS**

Objects and Reasons Clause (as amended) was passed.

**LONG TITLE**

The Long title (as amended) was passed.

**PART I: PRELIMINARY**

Clauses 1 and 2 (as amended) were passed.

Clause 3 (as amended) was passed.

Clause 5 (as amended) was passed.

Clause 7 (as amended) was passed.



### **PART III: INTERVENTIONS, REPORTS AND INVESTIGATIONS**

Clause 29 (as amended) was passed.

### **PART V: CHILD CARE CENTRES**

Clause 53 (as amended) was passed.

Clause 54 (as amended) was passed.

Clause 59 (as amended) was passed.

### **PART VII: MISCELLANEOUS**

Clause 68 (as amended) was passed.

### **First Schedule – Constitution and Procedure of the Child Protection Board**

First Schedule (as amended) was passed.

Second Schedule (as amended) was passed.

### **(ii) The Child Justice Bill, 2023 (CJB)**

### **PART I: PRELIMINARY**

Clause 1 (as amended) was passed.

### **PART V: INITIAL INQUIRY AND DIVERSION**

Clause 38 (as amended) was passed.

## **PART VI: COURT PROCEEDINGS**

Clause 42 (as amended) was passed.

## **PART X: SECURE RESIDENTIAL FACILITY**

Clause 68 (as amended) was passed.

Clause 87 (as amended) was passed.

Clause 92 (as amended) was passed.

## **FOURTH SCHEDULE**

Fourth Schedule (as amended) was passed.

## **FIFTH SCHEDULE**

Fifth Schedule, paragraph 7 (as amended) was passed.

### **Item 4: Consideration of the Draft Report**

The Committee reviewed the Draft Report and agreed that the aforementioned amendments would form part of the report together with the amended CPB and the CJB.

The Committee agreed that the contribution of former Sen. Dr. the Hon. Chelston W. Dac Brathwaite would be recognised under 'Acknowledgement' within the report. It should also be stated that the Committee spent a generous amount of time discussing the issues of sexual orientation and gender identity and their resulting implications from the CPB which were raised by the contributors and the general public. These issues and implications were evidentially and explanatorily dispelled. Further, the Committee welcomes continued participation of the wider public on both Bills due to the high level of public discussion.

The Committee also agreed that a formal Thank You letter should be sent from the Office of the Clerk of Parliament to all those organisations and persons who participated in the Committee's work.

Finally, it was agreed that the Draft Report would be amended and resubmitted to the Committee members. The Draft Report with the inclusion of all the Minutes, and Transcripts should be completed by Friday, February 23<sup>rd</sup>, 2023.

**Item 5: Any other Business**

There was none.

**ADJOURNMENT**

There being no other business, on the motion of Sen. John A. King seconded by Her Honour Cynthia Y. Forde the meeting was adjourned until Tuesday, February 20<sup>th</sup>, 2024 at 10:00 a.m.

Madam Chairman adjourned the meeting accordingly at 12:17 p.m.

  
**Deputy Clerk of Parliament**

Confirmed this 20<sup>th</sup> day of February 2024.

  
**Chairman**



**PARLIAMENT OF BARBADOS  
(FIRST SESSION OF 2022 - 2027)**

**JOINT SELECT COMMITTEE (STANDING)  
ON SOCIAL SECTOR AND THE ENVIRONMENT**

Minutes of the Eighth Meeting ('Hybrid') of the Joint Select Committee (Standing) on the review and examination of the Child Protection and Child Justice Bills, 2023, held in the Senate Chamber, Parliament Buildings, Trafalgar Street, Bridgetown, St. Michael on Tuesday, February 20<sup>th</sup>, 2024 at 10:00 a.m.

**PRESENT WERE:**

Ms. Toni N. S-A. Moore, J.P., M.P. (Chairman)

Sen. John A. King

Her Honour Cynthia Y. Forde, J.P., M.P.

Hon. Corey A. Lane, J.P., M.P. (online)

**ABSENT:**

Mr. Trevor A. Prescod, J.P., M.P.

Sen. Rev. Canon Dr. John A. Rogers, D.Th.

**IN ATTENDANCE WERE:**

Ms. Beverley S. Gibbons, *Deputy Clerk of Parliament*

Mr. Nigel R. Jones, *Deputy Clerk of Parliament*

Ms. Shawn R. Belle, *Chief Parliamentary Counsel (CPC)(Ag.)*

Miss J'anne C. Greenidge, *Typist (Journal Department)*

**Item 1: Call to Order/Welcome by Chairman**

Madam Chairman called the meeting to order at 10:35 a.m. and welcomed everyone.

**Item 2: Confirmation of the Minutes of the Meetings held on September 19<sup>th</sup>, October 3<sup>rd</sup>, October 6<sup>th</sup>, 2023 and February 16<sup>th</sup>, 2024**

The Minutes of the Meetings of September 19<sup>th</sup>, October 3<sup>rd</sup> (as amended), October 6<sup>th</sup>, 2023 and February 16<sup>th</sup>, 2024 were taken as read and were confirmed on the separate motion of Sen. John A. King seconded by Her Honour Cynthia Y. Forde.

**Item 3: Matters Arising**

There were no substantive matters arising.

**Item 4: Consideration of the Draft Report**

The Committee reviewed the draft Report and agreed to the following amendments:

1. Under the Terms of Reference:

Page 2, paragraph 1 was amended by deleting the word “International” appearing in line 2 and substitute the words “United Nations”, and by deleting the word “right” in line 2 and substituting the word “Rights”.

Paragraph 2 was amended by deleting the paragraph and substituting the following: “To examine the United Nations Standard Minimum Rules for the Administration of Juvenile Justice; the United Nations Rules for the Protection of Juveniles Deprived of their Liberty and the United Nations Guidelines for the Prevention of Juvenile Delinquency.”

2. Page 3, under scheduled meetings, after (viii) insert “(ix) Tuesday, February 20<sup>th</sup>, 2024.

3. Page 15, third paragraph, delete the word “limb” and substitute the word “provision”.

4. Page 28, last paragraph, delete the last sentence and substitute: “The Second Schedule of the CPB addresses consequential amendments and makes provision for the amendment as described above, accordingly.”

5. Page 30, second paragraph, line 4, delete the words "Clause 38(b)" and substitute the words "Clause 381(b)".

On the motion of Sen. John A. King, seconded by Her Honour Cynthia Y. Forde, the draft Report as amended was approved.

**Item 5: Any other business**

Madam Chairman informed the Committee that the Minutes of this meeting and the amended draft Report would be prepared and circulated by round-robin for approval.

Madam Chairman thanked everyone who played a role in assisting the Committee with its work, and sincerely thanked every member of the Committee who sacrificed their time to complete the Committee's work. She also expressed gratitude to Ms. Shawn R. Belle, Chief Parliamentary Counsel (Ag.) who ensured that the complex language of both Bills were clearly understood by the Committee.

**ADJOURNMENT**

There being no other business, on the motion of Her Honour Cynthia Y. Forde, seconded by Sen. John A. King, the meeting was adjourned *sine die*.

Madam Chairman adjourned the meeting accordingly at 11:35 a.m.

  
Deputy Clerk of Parliament

Confirmed this 20<sup>th</sup> day of February 2024.

  
Chairman





# **ORIGINAL BILLS**



**CHILD  
PROTECTION  
BILL, 2023**



2023/01/24

**OBJECTS AND REASONS**

This Bill makes provision for the reform of the law on the care and protection of children.

*Arrangement of Sections*

PART I

PRELIMINARY

1. Short title
2. Interpretation
3. Purpose
4. Principles to be applied in the administration of the Act
5. Child in need of care and protection
6. Request for services from other agencies
7. Participation of a child

PART II

ADMINISTRATION

8. Establishment of Authority
9. Powers and duties of the Authority
10. Establishment of Board
11. Remuneration

12. Director of Child Protection
13. Staff
14. Pension rights and service with Authority
15. Savings of pension etc.
16. Role of the Minister
17. Child Protection Report
18. Funds of the Authority
19. Application of funds
20. Accounts
21. Financial reports

### PART III

#### INTERVENTIONS, REPORTS AND INVESTIGATIONS

22. Intervention
23. Request for intervention
24. Mandatory reporting
25. Investigation of report
26. Records of reports and subsequent action
27. Protection of persons who make reports

- 28. Investigation and assessment
- 29. Action taken by Director
- 30. Decision against taking action
- 31. Removal of child by Director

#### PART IV

#### CARE AND PROTECTION ORDERS

- 32. Court orders where child in need of care and protection
- 33. Residential protection and treatment centre order
- 34. Emergency protection order
- 35. Assessment order
- 36. Social inquiry report
- 37. Care order
- 38. Care plan
- 39. Care responsibilities and duties under care order
- 40. Supervision order
- 41. Duties of supervisor
- 42. Custody care order
- 43. Recovery order



44. Compulsory assistance order
45. Support services order
46. Counselling or treatment order
47. Contact order
48. Order to accept undertakings
49. Provision of accommodation
50. Maintenance of children

#### PART V

#### CHILD CARE CENTRES

51. Principles guiding the operation of child care centres
52. Foster care
53. Approved child care centres
54. Purpose of approved child care centre
55. Delegated care responsibility at approved child care service
56. Contact with parents and relatives
57. Application for a recovery order
58. Order to contribute
59. Corporal punishment in child care centres

PART VI  
OFFENCES

- 60. Unsupervised or unattended child
- 61. Cruelty to children
- 62. Personation
- 63. Obstruction

PART VII  
MISCELLANEOUS

- 64. Exemption from duties and taxes
- 65. Regulations
- 66. Amendment of Schedule
- 67. Savings and transitional
- 68. Repeal and savings
- 69. Consequential amendments
- 70. Commencement

FIRST SCHEDULE

*Constitution and Procedure of the Child Protection Board*

SECOND SCHEDULE

*Consequential Amendments*



**BARBADOS**

A Bill entitled

An Act to make provision for the reform of the law on the care and protection of children.

ENACTED by the Parliament of Barbados as follows:

PART I

PRELIMINARY

**Short title**

1. This Act may be cited as the *Child Protection Act, 2023*.

**Interpretation**

2. In this Act,

“abuse” includes

- (a) child labour;
- (b) cyber-abuse;
- (c) emotional abuse;
- (d) financial abuse;
- (e) physical abuse;
- (f) sexual abuse;
- (g) verbal abuse;

“attorney-at-law” has the meaning assigned to it under section 2 of the *Legal Profession Act, Cap. 370A*;

“assessment” means an assessment performed pursuant to a child assessment order made under section 35;

“assessment order” means an order made under section 35;

“Authority” means the Child Protection Authority established by section 8;

“best interest” means the best interest of the child as described under section 3(2);

“Board” means the Child Protection Board established by section 10;

“care application” means an application for a care order made under section 37;

“care order” means an order made under section 37;

“care plan” means a plan made by the Director under section 38(2);

“care responsibility” means the authority of the Authority to

- (a) consent to the medical treatment not involving surgery for the child on the advice of a medical practitioner;
- (b) consent to the medical treatment involving surgery that a medical practitioner certifies in writing needs to be carried out as a matter of urgency and in the best interest of the child;
- (c) determine the educational needs of the child, including the school or educational institution that the child attends;
- (d) approve travel outside of Barbados;
- (e) correct and manage the behaviour of the child;
- (f) give permission for the child to participate in activities;
- (g) make alternative visiting or contact arrangements that are not provided for in an existing care plan; and
- (h) make any other decisions that are required to be made with respect to the day-to-day care of the child;

“child” means a person who is under the age of 18 years;

“Child Care Board” means the Board established by section 3 of the former Act;

“child care centre”

- (a) means a place
  - (i) where a child is cared for; or
  - (ii) approved by the Minister to provide for the care of a child; and

(b) includes

- (i) an assessment centre;
- (ii) a foster home;
- (iii) a children's home;
- (iv) a residential care centre;
- (v) a secure residential treatment centre;
- (vi) a training centre;
- (vii) such other centre;

“child in need of care and protection” means a child referred to in section 5;

“child labour” means any work undertaken by a child which harms or exploits the child whether physically, mentally, morally or prevents him from obtaining academic education or vocational training;

“compulsory assistance order” means an order made under section 44;

“contact order” means an order made under section 47;

“counselling or treatment order” means an order made under section 46;

“court” means

- (a) the Family Division of the High Court; and
- (b) the Magistrate's Courts having jurisdiction to hear an application;

“cyber-abuse” includes cyber-bullying, cyber-harrassment and exposure to harmful images by electronic means;

“danger” means physical, sexual, verbal or emotional harm;

“delegated care responsibility” means the authority delegated to a child care centre by the court pursuant to section 39 to

- (a) consent to medical treatment not involving surgery for the child on the advice of a medical practitioner;



- (b) correct and manage the behaviour of the child;
- (c) give permission for the child to participate in activities; and
- (d) make any other decisions that are required to be made with respect to the day-to-day care of the child;

“Director” means the Director of Child Protection appointed in accordance with section 12;

“emergency protection order” means an order made under section 34;

“emotional abuse”

- (a) means any act by a perpetrator which causes psychological pain or injury to a child or is likely to cause significant harm to the welfare or development of the child; and
- (b) includes harassment, the use of threatening words or behaviour;

“financial abuse” means the exercise of control by a perpetrator over a child’s access to financial resources through coercion, deception or intimidation, the effect of which is to hinder the ability to maintain a child and includes withholding the financial support necessary to maintain a child;

“former Act” means the *Child Care Board Act*, Cap. 381 repealed by section 68;

“guardian” means a person who assumes or has the legal responsibility and authority for making decisions with respect to a child;

“Minister” means the Minister with responsibility for the care, protection and welfare of children;

“neglect of a child” means

- (a) the failure of a parent of a child to provide the child with adequate care and guidance; or
- (b) any other act or omission by the parent with respect to a child that is inappropriate for the child or likely to be harmful to the child;

“order to accept undertakings” means an order made under section 48;

“parent”

- (a) means any person at law liable to maintain a child or entitled to his custody and includes
  - (i) a child’s birth parent where the child has not been adopted;
  - (ii) a child’s adoptive parent where the child has been adopted; and
  - (iii) a child’s guardian;
- (b) does not include a person acting as care giver on behalf of the Director or the Director;

“parental responsibility”

- (a) means the rights, duties, powers, responsibilities and obligations that by law a parent has in relation to a child; and
- (b) does not include the right to consent or withhold consent to the making of an order under the *Adoption Act*, Cap. 212;

“perpetrator” means a person who commits an act of abuse;

“physical abuse” means any act or omission by a perpetrator which causes pain or injury to the body of a child and includes bullying;

“police officer” means a member of the Barbados Police Service;

“recovery order” means an order made under section 43;

“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;

“removal” means the taking of a child and placing the child in the care and protection of the Director in accordance with this Act;

“residential protection and treatment centre” means a centre where a child may be placed to reside pursuant to section 33;

“residential protection and treatment centre order” means an order made under section 33;

“sexual abuse”

- (a) means the performance by a perpetrator of a sexual act on a child by the use of force, threats, fear, manipulation or guile;
- (b) includes
  - (i) grooming for the purpose of sexual exploitation, pornography, sexting or cyber abuse;
  - (ii) sexual harassment;
  - (iii) the actual or attempted commission of any of the offences stated in Part I of the *Sexual Offences Act*, Cap. 154;

“sexual harassment” has the meaning assigned to it under section 3(1) of the *Employment Sexual Harassment (Prevention) Act, 2017* (Act 2017-21);

“social inquiry report” means the report to be produced pursuant to section 36;

“supervision order” means an order made under section 40;

“support services order” means an order made under section 45;

“verbal abuse”

- (a) means the use of derogatory or negative language or communication to harm, manipulate or control another person, whether communicated by silence, damaging gossip, and other passive-aggressive behaviours; and
- (b) includes shouting, insulting, intimidating, threatening, shaming, demeaning, or name calling.

**Purpose**

3.(1) The purpose of this Act shall be to

- (a) ensure compliance with
  - (i) the United Nations Convention on the Rights of the Child;
  - (ii) the Universal Declaration of Human Rights; and
  - (iii) all other international instruments to which Barbados is a party with special regards to those which afford a child the necessary protection and assistance so that he can assume his eventual responsibilities within the community and for the full and harmonious development of his personality and to grow up in a family environment imbued with happiness, love and understanding;
- (b) promote the welfare of a child;
- (c) provide care and protection for a child;
- (d) protect a child from abuse and neglect; and
- (e) ensure that the best interest of the child is given paramount consideration in all matters.

(2) In determining what is in the best interest of the child, the following matters shall be taken into account:

- (a) the safety of the child;
- (b) the capacity of a parent to properly discharge his parental responsibility;
- (c) the physical, mental, emotional or psychological needs and development of the child;
- (d) the appropriate care or treatment required to meet the needs or development of the child;

- (e) where appropriate, the views of the child;
- (f) a secure place for the child;
- (g) the positive development of the child as a member of a family;
- (h) the love affection and ties between the child and other persons in the life of the child;
- (i) the capacity of persons, other than a parent, to exercise custody rights and duties in relation to the child; and
- (j) the continuity of the care for the child and the possible effect of disruption of that care on the child.

**Principles to be applied in the administration of the Act**

4. The following principles shall be applied in the administration of this Act:

- (a) the safety and welfare of a child shall be given paramount consideration in all actions and decisions in relation to the child;
- (b) the safety and welfare of a child who has been removed from his parent shall be paramount to the rights of the parent;
- (c) where a child is able to form his own views on a matter concerning his safety or welfare
  - (i) he shall be afforded an opportunity to freely express his views; and
  - (ii) his views are to be given due weight in accordance with his developmental capacity and the circumstances;
- (d) the least intrusive intervention in the life of a child and his family shall be taken in order to
  - (i) protect the child from harm; and
  - (ii) promote the development of the child;

- (e) where a child is temporarily or permanently deprived of his family environment or cannot be allowed to remain in that environment in his best interest
  - (i) the child shall be entitled to special protection and assistance from the Government of Barbados; and
  - (ii) his name and identity shall, where practicable, be kept confidential;
- (f) where a child is removed from the home of his parent under this Act, whether temporarily or permanently,
  - (i) he shall be entitled to a safe, nurturing, stable and secure environment; and
  - (ii) the child may retain relationships with people significant to the child, including his parents, relatives, peers, family friends and community, unless it is contrary to his best interest; and
- (g) where a child is placed in an approved child care centre, arrangements shall be made in a timely manner to ensure the provision of a safe, nurturing, stable and secure environment.

#### **Child in need of care and protection**

- 5.(1) A child is in need of care and protection where the child
- (a) does not have a parent;
  - (b) does not have a parent who is fit to exercise care or guardianship owing to
    - (i) mental or bodily disease;
    - (ii) infirmity or other incapacity; or
    - (iii) any other circumstances,providing for his up-bringing, and there is no available person or persons capable, fit or willing to undertake the care of such child;

- (c) has suffered harm caused by
  - (i) neglect of a child; or
  - (ii) the failure of a parent to
    - (A) supervise or protect the child; or
    - (B) adequately supervise or protect the child;
- (d) is a victim of abuse or exploitation, has been exposed to abuse or is likely to suffer abuse or exploitation;
- (e) has been abandoned or deserted by his parent;
- (f) has been exposed to danger, moral or otherwise;
- (g) has suffered physical, emotional or psychological harm caused by being exposed to domestic violence by or towards a parent or other person residing with the child;
- (h) suffers from a mental, emotional, physical or developmental condition that requires treatment to cure, prevent or ameliorate the effects of the condition or harm suffered and the parent
  - (i) does not, or refuses to, obtain treatment; or
  - (ii) is unable or unavailable to consent to services or treatment to remedy or ameliorate the effects of the condition or harm suffered by the child;
- (i) is in the custody of the Director or another person and the parent of the child refuses or is unable to resume custody of the child;
- (j) is a child beyond the control of his parent;
- (k) is a child who is a threat to himself or to others;
- (l) is less than 12 years old and has committed acts which would ordinarily constitute an offence as listed in the *Second Schedule* or the *Third Schedule* to the *Child Justice Act, 2023* (Act 2023- ); or

(m) has been determined by the court to be in need of care and protection pursuant to section 39 of the *Child Justice Act, 2023* (Act 2023- ).

(2) A child in need of care or protection may seek assistance from the Director.

#### **Request for services from other agencies**

6.(1) In promoting or ensuring the safety or welfare of a child, the Director may request a service to a child or the family of a child from the following:

- (a) a government department;
- (b) an agency in receipt of government funding;
- (c) a non-governmental organization; or
- (d) any other person that promotes the care and protection of children.

(2) A government department, an agency, organization or any person to which a request is made under subsection (1), shall use their best endeavours to comply with the request where

- (a) the request is consistent with their own responsibilities; and
- (b) does not prejudice the discharge of their functions.

#### **Participation of a child**

7.(1) A child shall be entitled to participate in a decision that is likely to have a significant impact on his life.

(2) In order to ensure that a child is able to participate in a decision that is likely to have a significant impact on his life, the Director shall provide the child with the following:

- (a) adequate information in a manner and language that he can understand including
  - (i) the decision to be made;



- (ii) the reasons for the intervention by the Director;
  - (iii) the ways in which the child may participate in the decision making process; and
  - (iv) any relevant complaint mechanisms;
- (b) the opportunity to freely express his views according to his abilities, age, maturity and developmental capacity;
  - (c) any assistance that is necessary for the child to express his views;
  - (d) information as to how the views of the child will be recorded and taken into account;
  - (e) information with respect to the outcome of any decision concerning the child and an explanation of the reasons for the decision; and
  - (f) an opportunity to respond to a decision made concerning the child.
- (3) For the purposes of this section, a decision that is likely to have a significant impact on the life of a child shall include:
- (a) any plan for emergency or ongoing care;
  - (b) the development or review of a care plan in relation to the child;
  - (c) any care application in relation to the child;
  - (d) the provision of counselling or treatment services; or
  - (e) any contact with a parent, relative or other persons connected with the child.
- (4) A child shall be entitled to legal representation by an attorney-at-law in any proceedings or hearings in relation to the child.
- (5) Where the views of the child differ from the position of the Director, the child may, within 30 days of the notification of the position, appeal to a Judge in chambers.

PART II

ADMINISTRATION

**Establishment of Authority**

8.(1) There is established an Authority to be known as the Child Protection Authority.

(2) The Authority is a body corporate to which section 21 of the *Interpretation Act*, Cap. 1 applies.

**Powers and duties of the Authority**

9.(1) The Authority shall

- (a) provide care, protection and rehabilitation of a child;
- (b) investigate a complaint or report made in relation to a child or the mistreatment of a child;
- (c) remove a child from his home, child care centre or environment where it is shown that the child is in danger;
- (d) monitor the operation of a child care centre and conduct reviews to determine its compliance with any statutory provision;
- (e) issue guidelines to child care centres;
- (f) establish, with the approval of the Minister, policies and procedures respecting all aspects of child care centres;
- (g) provide consultation and direction to relevant authorities respecting child care centres in accordance with this Act;
- (h) provide services and promote the development, adoption and evaluation of policies and procedures that accord with the purposes of this Act;
- (i) promote and safeguard the safety and welfare of a child;

- (j) assess and investigate a complaint or report and provide an assessment of any such complaint or report;
- (k) act as an advocate to promote the rights of children;
- (l) take all necessary steps to prevent children from suffering abuse or neglect;
- (m) promote and facilitate contact between a child and his parent, relative, friend or other person connected with him unless it is not in the best interest of the child or where it is not reasonably practicable;
- (n) inspect a place or premises where a child resides;
- (o) approve any programme or service in relation to the development, rehabilitation or welfare of a child;
- (p) establish procedures for the delegation of its duties and to establish policies respecting the direction and supervision of such delegation;
- (q) exercise such powers as are conferred on it by this Act and as may be necessary with respect to any child so as to serve the best interests of that child;
- (r) make use of such facilities and services available for children that are provided by other agencies or institutions, as appears reasonably necessary to the Authority;
- (s) advise the Minister and other persons on matters relating to child care centres, programmes, facilities and resources necessary to carry out the requirements under this Act;
- (t) report to the Minister
  - (i) the operation and administration of this Act; and
  - (ii) whether or not the purpose and the principles of this Act are being achieved;

- (u)* perform such other functions as may be necessary to carry out the provisions of this Act or as may be determined by the Minister; and
  - (v)* do all such things as may be necessary or expedient for the proper performance of its duties.
- (2) In the course of exercising its powers under subsection (1), the Authority may provide the following services to a child:
  - (a)* advice, guidance and counselling;
  - (b)* occupational, social, cultural or recreational activities; and
  - (c)* any other service as may be required for the care and protection of a child.
- (3) In determining what is in the best interest of a child, the Authority shall, in addition to the principles set out in section 3(2), take into consideration the following:
  - (a)* the love, affection, and other emotional ties existing between the parties involved and the child;
  - (b)* the capacity and disposition of the parties involved to
    - (i)* give the child love, affection and guidance and to continue the education and raising of the child in his or her religion, if any; and
    - (ii)* provide the child with food, clothing, medical care or other remedial care;
  - (c)* the length of time the child has lived in a stable, satisfactory environment, and the desirability of maintaining the status quo;
  - (d)* where appropriate, preserving the family unit and reuniting the child with his relatives at the earliest opportunity;
  - (e)* the right of the child to the enjoyment of family life;
  - (f)* the right of the child to be heard;
  - (g)* the right of the child to representation and a fair hearing;

- (h) any other relevant support necessary for the well being of the child;
- (i) the permanence of the family unit;
- (j) the home, school and community record of the child;
- (k) the willingness and ability of each parent to facilitate and encourage a close parent-child relationship between the child and the other parent or the child and the parents;
- (l) the willingness and ability of relatives to facilitate and encourage familial relationships between the child and other family members;
- (m) any other form of abuse, regardless of whether it was directed against or witnessed by the child;
- (n) the reasonable preference of the child, if the Authority considers the child to be of an age and maturity to express such preference; and
- (o) any other factor that the Authority may consider relevant to the particular child.

#### **Establishment of Board**

10.(1) There is established a Board, to be known as the Child Protection Board, which shall be responsible for the formulation of the policy of the Authority and for the general administration of the Authority.

(2) The *First Schedule* has effect with respect to the constitution of the Board and otherwise in relation thereto.

#### **Remuneration**

11. The Directors of the Board are entitled to such remuneration and allowances as the Minister determines.

#### **Director of Child Protection**

12.(1) The Board may with the approval of the Minister, appoint a person to be the Director of Child Protection, who shall be an employee of the Authority

at such remuneration and on such terms and conditions as the Minister approves in writing.

(2) The Director is subject to the directions of the Board and is responsible to the Board for the execution and management of the affairs of the Authority.

(3) Notwithstanding the generality of subsection (2) the Director shall have the following duties:

- (a) to promote and safeguard the safety, welfare and well-being of a child;
- (b) to intervene, investigate or prepare reports pursuant to Part III;
- (c) to oversee the operation of child care centres and the delivery of child care services;
- (d) to establish, with the approval of the Minister, policies and procedures respecting all aspects of child care services;
- (e) to provide consultation and direction to relevant authorities respecting child care services in accordance with this Act;
- (f) to establish procedures for the delegation of his duties and to establish policies respecting the direction and supervision of such delegation;
- (g) to make arrangements for and in relation to the placement of a child;
- (h) to take appropriate measures to ensure confidentiality of the records of a child and the parent of a child;
- (i) to issue guidelines to child care services in giving effect to this Act;  
and
- (j) to perform such other functions as may be necessary to carry out the provisions of this Act.

(4) The Director may delegate to a member of staff or to any other person his functions other than his power of delegation under this Act.

**Staff**

13.(1) Subject to subsections (2) and (3), the Board may appoint and employ such officers, agents and servants as it considers necessary for the proper carrying into effect of the provisions of this Act, at such remuneration and on such terms and conditions as the Minister approves in writing.

(2) Notwithstanding subsection (1), no post shall be established and no salary in excess of such amount as the Minister may determine.

(3) Subject to this Act and to the *Statutory Boards (Pensions) Act*, Cap. 384 no provision shall be made for the payment of any pension, gratuity or other like benefit to any person employed by the Authority without the prior approval in writing of the Minister.

**Pension rights and service with Authority**

14.(1) Where a public officer is seconded or temporarily transferred from a pensionable office within the meaning of section 2(1) of the *Pensions Act*, Cap. 25 to perform any service with the Authority, his service with the Authority shall, unless the President otherwise decides, count for pension under that Act as if the officer had not been so seconded or transferred.

(2) Where the services of a person employed by the Authority are on loan to the Government that person is entitled to such benefits and terms of employment as are applicable to the post which he occupies, and the service with the Authority shall be taken into account as continuous service with the Government and the *Pensions Act* and *Pensions Regulations, 1947* shall apply to him as if his service with the Authority were service within the meaning of that Act.

(3) Where a public officer is transferred to the service of the Authority in accordance with subsection (2), the Authority shall refund to the Consolidated Fund all moneys payable as pension in respect of the service of that officer with the Authority.

**Savings of pension etc.**

**15.** Where a public officer who has pensionable service is transferred to or becomes employed in the service of the Authority, his service with the Authority shall, whether or not there was a break in service, be aggregated with his service in the public service and his pension shall be calculated in accordance with the *Pensions Act, Cap. 25* and *Pensions Regulations, 1947* as if all of his service was service in the public service.

**Role of the Minister**

**16.(1)** The Minister shall promote a partnership approach with families, the government, non-governmental agencies, organisations, corporations, business agencies and the community in taking responsibility for and dealing with a child who is in need of care and protection.

(2) In giving effect to subsection (1), the Minister shall

- (a) promote the care of children;
- (b) promote the development of procedures and protocols with families, government, non-governmental agencies, organisations, corporations, business agencies and the community; and
- (c) ensure that these procedures and protocols are implemented and reviewed regularly.

(3) The objects of the procedures and protocols referred to in subsection (2) shall be for the

- (a) care and protection of children;
- (b) provision of support services directed towards strengthening and supporting families; and
- (c) promotion and the development of co-ordinated strategies.

(4) The Minister shall have the power to give the Board directions with respect to a policy.



### **Child Protection Report**

17.(1) The Authority shall, in respect of every calendar year, submit a report of its proceedings in respect of child care and protection to the Minister.

(2) The Minister shall cause the report referred to in subsection (1) to be laid before Parliament with any comments he thinks fit.

(3) The report referred to in subsection (1) shall be published by the Authority after consultation with the Minister.

### **Funds of the Authority**

18. The funds of the Authority shall comprise

- (a) such amounts as may be voted for the purpose by Parliament;
- (b) all amounts payable to or vested in the Authority; and
- (c) gifts to the Authority from any person, organisation or body.

### **Application of funds**

19. The Authority shall apply its moneys for

- (a) the payment of its officers and employees;
- (b) the maintenance of its child care centres;
- (c) the making of grants to private child care centres; and
- (d) such other purposes as are necessary for the performance of its functions under this Act.

### **Accounts**

20. The Authority shall keep proper books of account of its revenues, expenditures, assets and liabilities and implement International Accounting Standards and practices in accordance with the accounting standards and standing

instructions issued by the Accountant-General under the *Public Finance Management Act, 2019* (Act 2019-1).

**Financial reports**

**21.** The Authority shall submit such reports and information as required by Part IX of the *Public Finance Management Act, 2019* (Act 2019-1).

**PART III**

**INTERVENTIONS, REPORTS AND INVESTIGATIONS**

**Intervention**

**22.(1)** The Director may intervene where

- (a) a request for assistance in relation to a child is made to the Director;
- (b) he receives a report that a child is a child in need of care and protection;  
or
- (c) it appears to the Director that a child is in need of care and protection.

(2) In determining the appropriate response to a request for assistance or to a report concerning a child, the Director shall have regard to the following:

- (a) the immediate safety and welfare of the child and any other child in the usual residential setting of the child;
- (b) the age or maturity of the child;
- (c) any disability of the child; and
- (d) the existing circumstances of the family.

(3) The removal of a child from his parents shall only occur where it is necessary to protect the child from the risk of serious harm or danger.

**Request for intervention**

**23.(1)** A person may seek assistance in the form of an intervention from the Director where

- (a)* there is a serious or persistent conflict between a child and a parent of a child of such nature that the safety or welfare of the child is in jeopardy; or
- (b)* a parent is unable to provide adequate care, supervision or protection for a child to such an extent that the safety or welfare of the child is in jeopardy.

**(2)** In responding to a request made under subsection (1), the Director shall consider the appropriateness of providing or arranging such assistance as is necessary to

- (a)* enable the child and parent of the child to resolve the conflict without recourse to legal proceedings;
- (b)* ensure that the child is adequately cared for, supervised or protected; or
- (c)* enable the child and his parent to have access to appropriate services.

**(3)** In making provision for the receipt of any assistance under subsection (2), the Director shall ensure that the child, if sufficiently mature, has

- (a)* been counselled about the assistance necessary to resolve the conflict with his parent; and
- (b)* given consent to such assistance.

**(4)** The Director shall cause a child to be brought before the court where he is of the opinion that, despite the assistance provided under subsection (2), the safety or welfare of the child continues to be in jeopardy.

**(5)** The Director may apply to the court for any order under this Act.

- (6) On an application by the Director, the court may make a care order vesting care responsibility in the Director where the court is satisfied that
- (a) the child refuses to adhere to the guidance and control of a parent;
  - (b) it is in the best interests of the child; and
  - (c) the parent understands the results which will follow from the making of the order.
- (7) Notwithstanding subsection (5), the court may make any order it thinks fit having regard to the circumstances in relation to the child.

**Mandatory reporting**

24.(1) This section shall apply to

- (a) a parent;
- (b) a medical practitioner, a health practitioner, a dental practitioner, a nurse or mental health practitioner;
- (c) an administrator of a hospital or medical facility;
- (d) a school principal, teacher or other teaching professional;
- (e) a social worker or other social service professional;
- (f) a law enforcement officer;
- (g) an internet provider, film technician, computer technician or telecommunications technician;
- (h) any person who provides health care, welfare, education, religious, child care or law enforcement services, wholly or partly to a child; and
- (i) any other person who by virtue of the nature of their work, owes a duty of care to a child.

- (2) A person listed under subsection (1) who has knowledge or has reasonable grounds to suspect that a child is in need of care and protection shall be under a duty to
- (a) immediately report or cause to be reported the circumstances to the Director or a police officer; and
  - (b) provide the Director or a police officer with such additional information as is known or available to the person.
- (3) Where a person makes a report to a police officer under subsection (2)(a), the police officer shall transmit the report to the Director within 24 hours.
- (4) Subsection (2) shall apply notwithstanding the confidential nature of the information on which the report is based.
- (5) Nothing in this section abrogates any attorney-client privilege.
- (6) A report made under subsection (2) may be made anonymously.
- (7) A person who fails to comply with subsection (2) is guilty of an offence and is liable on summary conviction to a fine of \$20 000 or to a term of imprisonment of 2 years or to both.
- (8) A person who makes a report in good faith shall not be liable for prosecution.
- (9) A person who intentionally makes a false report or provides false or misleading information is guilty of an offence and is liable on summary conviction to a fine of \$10 000 or imprisonment for one year or to both.

#### **Investigation of report**

25. Where a report is made under section 24, the Director shall immediately conduct an investigation to determine whether the child is a child in need of care and protection.

**Records of reports and subsequent action**

- 26.(1)** The Director shall keep a record of
- (a)* all reports made to or by the Director;
  - (b)* any action taken in response to a report received under section 24; and
  - (c)* any disposition of and dealings with a child to whom the report and action referred to in paragraph *(b)* relate.
- (2)** The record of reports shall be kept
- (a)* in physical or digital format; and
  - (b)* in accordance with any relevant enactment.

**Protection of persons who make reports**

- 27.(1)** Where a person makes a report under section 24
- (a)* the making of the report shall not constitute a breach of any professional etiquette or ethics or a departure from any accepted standards of professional conduct;
  - (b)* no liability shall be incurred for defamation as a consequence of the report;
  - (c)* the making of the report shall not constitute a ground for civil proceedings for malicious prosecution or for conspiracy;
  - (d)* the report, or evidence of its contents, is not admissible in any proceedings, other than in proceedings relating to the care and protection of a child in the court;
  - (e)* he shall not be compelled in any proceedings to
    - (i)* produce the report, a copy of the report or an extract from the report; or
    - (ii)* disclose or give evidence of any of contents of the report; and

- (f)* the identity of the person who made the report or information from which the identity of that person may be deduced shall not be disclosed to any person without
  - (i) the consent of the person who made the report; or
  - (ii) the leave of the court.
- (2) Where consent is not granted under subsection (1)(*f*), a party or witness in any such proceedings shall not be asked or required to answer any question that cannot be answered without disclosing the identity or leading to the identification of that person.
- (3) A report made under section 24 shall be admissible in any proceedings relating to the care and protection of a child where the report is certified by the Director.
- (4) The court shall not grant leave under subsection (1)(*f*)(ii) unless the court is satisfied that
  - (*a*) the report is of critical importance in the proceedings; and
  - (*b*) failure to admit the report would
    - (i) prejudice the proper administration of justice; or
    - (ii) prevent the proper investigation of the report.
- (5) Where leave is granted under subsection (1)(*f*)(ii), the court shall
  - (*a*) state the reasons; and
  - (*b*) inform the Director that the identity of the person who made the report will be disclosed.

#### **Investigation and assessment**

**28.(1)** The Director shall conduct an investigation and assessment of the circumstances relating to a child where

- (*a*) a request for intervention is made under section 23(1)(*a*);

- (b) a report is made under section 24; or
  - (c) where it appears to the Director that a child is a child in need of care and protection.
- (2) Where an investigation and assessment have been undertaken under subsection (1), the Director may determine that
  - (a) no further action is necessary;
  - (b) a further investigation is necessary;
  - (c) the removal of the child is necessary; or
  - (d) a care application is to be made.
- (3) An investigation by the Director may include an analysis of the following matters in relation to a child:
  - (a) medical;
  - (b) health;
  - (c) social;
  - (d) residential;
  - (e) educational;
  - (f) economic; and
  - (g) any other factors affecting the life of the child.
- (4) In conducting an investigation under this section, the Director may
  - (a) visit the residence of the child and other places frequented by the child;
  - (b) transport the child to a place considered by the Director to be appropriate;
  - (c) interview
    - (i) the child;
    - (ii) a parent or relative of the child;



- (iii) any person who cares for the child or any person who has had an opportunity to observe the child; or
    - (iv) any person who provides health, social, educational and other services to the child or a parent of the child;
  - (d) cause an examination to be made of the physical, mental and emotional health and development of the child by a medical practitioner or other medical professional;
  - (e) require information to be provided to the Authority from medical, social, educational and other service records concerning the child, a parent of the child or both;
  - (f) request that a parent of a child undergo a physical, mental or psychological examination or any other assessment; or
  - (g) consult with such other persons and gather such other evidence as may be necessary to complete the investigation.
- (5) In conducting an investigation or assessment under this section, the Director shall have regard to any wish of the child taking into account
- (a) the age and maturity of the child; and
  - (b) the extent to which the child appears to be in need of care and protection.
- (6) The Director may apply to the court for an order requiring any person to
- (a) provide such information under subsection (5) to the Director;
  - (b) allow the Director access to a person, place or record; or
  - (c) cooperate with any investigation by the Director.
- (7) Subject to subsection (9), the Director shall provide a report of the results of an investigation to
- (a) the parent of the child or any person who is the subject of the investigation; and

- (b)* the child where he is
    - (i)* no less than 12 years; and
    - (ii)* capable of understanding the circumstances of the investigation.
- (8)** A report shall not be provided under subsection (7) unless
  - (a)* the Director has reasonable grounds to believe that the report will endanger the safety of the child or any other person; or
  - (b)* a criminal investigation related to the matter has been initiated or is likely to occur.
- (9)** A person who intimidates, threatens or obstructs the Director in the exercise of his functions under this section is guilty of an offence and is liable on summary conviction to a fine of \$10 000 or to a term of imprisonment of one year or to both.

#### **Action taken by Director**

**29.(1)** Where after an investigation or assessment the Director is of the opinion that a child is in need of care and protection, the Director shall take whatever action is necessary to safeguard or promote the safety and welfare of the child.

- (2)** Without limiting subsection (1), the Director may take the following actions:
- (a)* provide or arrange for the provision of support services for the child, his family or both;
  - (b)* develop, in consultation with the parents of the child, whether jointly or separately, a care plan to meet the needs of the child or his family which does not involve taking the matter before the court;
  - (c)* ensure the protection of the child by removing the child from his parents;

- (d)* ensure the protection of the child by removing the child from any place or premises where he is resident;
  - (e)* seek an alternative dispute resolution procedure; or
  - (f)* seek an appropriate order from the court.
- (3) The Director shall consider the appropriateness of using an alternative dispute resolution procedure prior to applying to the court for an order under subsection (2)(f).
- (4) The Director shall consider the appropriateness of an alternative dispute resolution procedure that is designed to
  - (a)* ensure intervention so as to resolve problems which may exist at an early stage;
  - (b)* develop a care plan;
  - (c)* reduce the likelihood that an application for an order will need to be made;
  - (d)* reduce the incidence of breakdown in relationships between a child and his parent; and
  - (e)* work towards the making of decisions that are in the best interests of the child concerned where an application for a care order is made.
- (5) The participation by a child or a parent of a child in any form of alternative dispute resolution procedure shall be voluntary.
- (6) Where a care plan is developed pursuant to subsection (2)(b) that care shall be signed by the parent of the child who is the subject of the care plan.

**Decision against taking action**

- 30.(1)** The Director may decide against taking any action where he considers that
- (a)* proper arrangements exist for the care and protection of the child; and

(b) the circumstances which led to the investigation or assessment have been or are being adequately addressed.

(2) Where the Director decides not to take any action, it shall make a record of the reasons for its decision.

**Removal of child by Director**

31.(1) Where the Director has reasonable grounds to believe that

(a) the health or safety of the child is in immediate or imminent jeopardy; and

(b) there is not enough time to apply to the Court for an order under section 32

the Director may, if necessary with the assistance of a police officer, and without the need for any further authority other than that conferred on him by this subsection, enter any place or premises where the child is believed to be present or to reside, and search for, locate and take the child into custody.

(2) Where a child is removed from a place or premises pursuant to subsection (1) and the care responsibility of the child is assumed by the Director, he shall, within 24 hours after the child has been removed,

(a) apply to the court for order specified in section 32; and

(b) inform the parent.

(3) The Director may place the child referred to in subsection (1) in a child care centre and the child care centre shall have delegated care responsibility in relation to a child as delegated to that child care centre by the Director.

## PART IV

## CARE AND PROTECTION ORDERS

**Court orders where child in need of care and protection**

**32.** Where the court is satisfied that a child brought before it by the Director is a child in need of care and protection, the court may make the following orders:

- (a)* a care order;
- (b)* a child assessment order;
- (c)* a compulsory assistance order;
- (d)* a contact order;
- (e)* a counselling or treatment order;
- (f)* a custody care order;
- (g)* an emergency protection order;
- (h)* a recovery order;
- (i)* a residential protection and treatment centre order;
- (j)* a supervision order;
- (k)* a support services order;
- (l)* an order to accept undertakings; or
- (m)* any other order the court thinks fit.

### **Residential protection and treatment centre order**

- 33.(1)** Where the court is satisfied that a child brought before it is
- (a) less than 12 years old and has committed acts which would ordinarily constitute an offence as listed in the *Second Schedule* or the *Third Schedule* to the *Child Justice Act, 2023* (Act 2023- );
  - (b) a significant threat to themselves or others; or
  - (c) in need of care and protection pursuant to section 39 of the *Child Justice Act, 2023* (Act 2023- )

the court may make a residential protection and treatment centre order to have such a child reside in a residential protection and treatment centre for a period not exceeding 3 years.

- (2) Pursuant to subsection (1), the court may make such orders as are necessary to assist in determining the period of residence for a child in a residential protection and treatment centre.
- (3) A residential protection and treatment centre order made under subsection (1) shall be reviewed by the court every 3 months or where the period of residence ordered by the court is less than 3 months, at such interval as the court determines.

### **Emergency protection order**

- 34.(1)** The court shall make an emergency protection order where it is satisfied, on the basis of an *ex parte* application by the Director, that
- (a) the child is suffering or is likely to suffer physical, emotional, mental or psychological harm and is in urgent need of care and protection; or
  - (b) enquiries as to whether the child is suffering or is likely to suffer physical, emotional, mental or psychological harm are being frustrated by access to the child being unreasonably refused and the applicant has reason to believe that access to the child is required as a matter of urgency.

- (2) An emergency protection order may
- (a) direct a person named in the order and who is in *de facto* control of the child or who is in a position to do so, to produce the child to the applicant;
  - (b) authorise the removal of a child from any place at any time;
  - (c) prohibit the removal of the child from any place at which he was being accommodated immediately before the order was made;
  - (d) give the applicant parental responsibility for the child;
  - (e) limit the applicant to the exercise only of those powers which are specified in the order;
  - (f) determine the contact which is or is not allowed with any named person; and
  - (g) require the medical, psychiatric and psychological examination of the child.
- (3) An order made under this section shall have effect for a period not exceeding 14 days, unless the order is extended in accordance with subsection (4).
- (4) An order made under this section may, while the order remains in force, be extended once for a period not exceeding 14 days.

#### **Assessment order**

**35.(1)** A child assessment order shall be made for the purpose of assessing the following:

- (a) a child's state of health;
- (b) a child's development; or
- (c) the manner in which the child has been treated.

- (2) The court may make a child assessment order where it is satisfied that
  - (a) the applicant has reasonable cause to suspect that the child is suffering or is likely to suffer physical, emotional, mental or psychological harm;
  - (b) such an assessment is required to enable the applicant to determine whether or not the child is suffering or is likely to suffer harm; and
  - (c) it will be unlikely that an assessment will be made or be satisfactory in the absence of the order.
- (3) A child assessment order
  - (a) shall specify the period of assessment and the date on which the assessment is to begin;
  - (b) may require the medical, psychiatric and psychological examination of the child; and
  - (c) shall require the person conducting the assessment to
    - (i) do so in accordance with the terms of the order;
    - (ii) prepare a report of the assessment; and
    - (iii) submit the report to the court.
- (4) The carrying out of a medical examination under an assessment order may include the taking and analysis of samples and the use of any machine or device that enables or assists in the examination of a person.
- (5) The court may, for the purposes of an assessment order, appoint a person to assess the capacity of a person having parental responsibility, or who is seeking parental responsibility for a child, to carry out that responsibility.
- (6) The assessment to be carried out under subsection (5), must be carried out only with the consent of the person whose capacity is to be assessed.
- (7) Where a child assessment order states that a child is to be kept away from his home, it shall specify the conditions under which the child may be so kept,



including the degree of contact with other persons that he may be allowed during that period.

(8) Where the court makes a child assessment order, the person who is in *de facto* control of the child or who is in a position to produce the child, shall comply with any direction in the order and produce the child to the person named in the order.

(9) A child shall be informed about the reasons for the assessment in a language and a manner that he understands, having regard to his age, maturity and circumstances.

### **Social inquiry report**

**36.(1)** The court shall require a written social inquiry report in respect of a child before it makes an order under this Part.

(2) The Director shall prepare a social inquiry report and he shall comply with the request of the court whenever required to produce a social inquiry report.

(3) The Director shall make a home visit to interview the parent of the child concerned and carry out his or her investigations concerning the child before making a social inquiry report.

(4) Where the child in respect of whom the social inquiry report is made is considered by the Director to be of sufficient age and understanding, he shall be interviewed by the Director.

(5) A social inquiry report shall contain matters relating to the welfare of the child and recommendations as to any action to be taken by the court.

(6) The court shall take the information contained in the social inquiry report into account in so far as it is relevant to the order being made.

(7) Where the court is not satisfied with any recommendation made by the Director in the social inquiry report, the court shall state and record its reasons for not complying with the recommendation.

**Care order**

- 37.(1) A care order shall be made for the purpose of removing a child who is in need of care and protection and placing such child in the care of the Director.
- (2) The court may make a care order where it is satisfied that a child is a child in need of care and protection.
- (3) The court may, on the application of the Director, make an order placing a child in the care of the Director.
- (4) Where a Director makes an application to the court for a care order pursuant to subsection (3) he shall furnish the court with details on the following:
- (a) the support and assistance provided for the safety, welfare and well-being of the child; and
  - (b) any alternative action to a care order that were considered, prior to the making of the application for the care order and the reasons why the alternative action was rejected.
- (5) An application for a care order shall be accompanied by a care plan.
- (6) The Director shall make all reasonable efforts to notify
- (a) the parents of a child of the making of a care application in relation to the child; and
  - (b) the child who is the subject of a care application of the making of the application in a language and in a manner that the child can understand having regard to his development and the circumstances.
- (7) The Director shall, within 7 days, after a care application is made in relation to a child, cause a copy of the application, together with copies of all supporting affidavits and other documentary evidence, to be served on the parent of the child.
- (8) A care order may be made as an interim order or a final order.

- (9) A care order shall, depending on the age of the child, be for a period not exceeding 3 years or until the child attains the age of 18 years, whichever is the earlier.
- (10) A care order shall be reviewed at least once every 90 days by the Director or a person designated by the Director who may make recommendations as to any action to be taken having regard to the outcome of the review.
- (11) The court may, upon an application, vary a care order.

### **Care plan**

**38.(1)** The court shall not make a final order for the removal of a child from the care and protection of his parent or allocation of parental responsibility in respect of the child unless the court has considered a care plan.

- (2) A care plan shall be made by the Director and submitted to the court.
- (3) A care plan shall provide for the following:
- (a) the allocation of parental responsibility for the duration of the period for which the child is removed from the care of his parent;
  - (b) the kind of placement proposed to be sought for the child including
    - (i) any interim arrangement that is proposed for the child pending permanent placement; and
    - (ii) the timetable proposed for achieving a permanent placement;
  - (c) residential arrangements for the child;
  - (d) supervision of the child;
  - (e) the child care centre designated to supervise the placement of the child;
  - (f) the contact arrangements between the child and his parent, relatives, friends and other persons connected with the child;
  - (g) education and training for the child;
  - (h) medical care for the child;

- (i) the services that need to be provided to the child; and
  - (j) any other relevant matter.
- (4) A care plan shall be made as far as possible with
  - (a) the agreement of the parent of the child concerned; and
  - (b) the child concerned pursuant to section 7.

### **Care responsibilities and duties under care order**

- 39.(1)** The child care centre where a child is placed under a care order has delegated care responsibility in relation to a child as delegated to it by the court pursuant to section 37.
- (2) The contact of the child with his parent, relatives and friends while he is in a child care service shall be encouraged unless it is not in the best interests of the child.
  - (3) The child care centre shall ensure that the development of the child while in their care, particularly his health and education, is given paramount attention.
  - (4) The Director shall work with the parent of the child before and after the termination of the care order, so that the child can be returned to his family or community after the termination of the care order.
  - (5) The Director shall be responsible for
    - (a) providing and encouraging family and child counselling, before, during and after the return of the child; and
    - (b) seeking the assistance of persons in the family or community who can, as far as practicable, help the process of resolving the problems which caused the care order to be made.
  - (6) Where a child is placed with a foster family, the Director shall inform the parent of the progress of the child and to arrange a trial period for the child to be reunited with the parent.

**Supervision order**

40.(1) The court may, on the application of the Director, make an order for the supervision of a child by the Director or a person recommended by the Director to perform the duties of a supervisor.

(2) The court may make a supervision order where it is satisfied that a child is in need of care and protection.

(3) A supervision order may require a child, his parent or the child and his parent

(a) to report to the supervisor at a place and at intervals stated by the supervisor; and

(b) to take part in discussions with the supervisor in relation to the welfare, safety and well-being of the child, in particular whether the child should be engaged in some form of educational, vocational or recreational activity or other activity.

(4) The court may require the submission of a report by the supervisor detailing

(a) the progress or outcome of the supervision;

(b) whether the purpose of the supervision has been achieved; and

(c) whether any other order should be made for the care and protection of the child.

(5) A supervision order shall be for a period not exceeding one year.

(6) A supervision order made under this section may, while the order remains in force, be extended once for a period not exceeding one year.

**Duties of supervisor**

41. A supervisor shall

(a) mentor, advise and assist the child;

- (b) advise the parent of the child;
- (c) make plans for the future of the child in consultation with the child and his parent; or
- (d) take such other reasonable steps as may be necessary to reduce any harm to the child.

**Custody care order**

42.(1) Where the Director assesses that

- (a) there is not a realistic possibility of restoring a child to the custody of a parent pursuant to the provisions of this Act;
- (b) it is in the best interest of the child that he no longer live with his parent; and
- (c) a least restrictive option is not available;

the Director shall make an application to the court for a custody care order.

(2) An application under subsection (1) shall be accompanied by a permanency plan which does not involve restoration and shall be submitted to the Court for its consideration.

(3) In preparing the permanency plan under subsection (2), the Director shall determine the type of placement which shall be suitable for the child.

(4) Where the court upon examination of the application and permanency plan made pursuant to this Part finds that the grounds upon which the application is made has been substantiated and it is necessary to provide the best interest of the child, the court shall grant the custody care order.

(5) A custody care order places a child in the custody of the Authority.

(6) Where a child is placed in the custody of the Authority, the Authority shall have the rights and responsibilities of a parent for the purposes of the care of the child and those duties shall be assessed and performed by any person caring for

the child until the custody care order is terminated by any action which results in the permanent placement of the child.

(7) For the purposes of this section “permanency plan” means a plan that aims to provide a child with a stable placement which offers long term security and that

- (a) has regard, in particular, to
  - (i) the environment of the placement being safe, nurturing, stable and secure;
  - (ii) the best interests of the child; and
  - (iii) the wishes of the child, this may include the retention by the child of relationships with people significant to the child, including his or her birth or adoptive parents, siblings, extended family, peers, family, friends and community;
- (b) meets the needs of the child; and
- (c) avoids the instability and uncertainty arising through a succession of different placements.

#### **Recovery order**

43.(1) A recovery order shall be made where it appears to the court that there is reason to believe that a child

- (a) has been unlawfully taken or is being unlawfully taken away from the person who has care responsibility for the child;
- (b) has run away or is staying away from the person who has care responsibility for him; or
- (c) is missing.

- (2) A recovery order shall
- (a) direct any person, who is in a position to do so, to produce the child to any of the following persons:
    - (i) any person specified in the order;
    - (ii) a police officer; or
    - (iii) the Director;
  - (b) authorise the removal of the child by any of the persons under paragraph (a), or
  - (c) authorise a police officer to enter premises specified in the order to search for the child.

**Compulsory assistance order**

44.(1) A compulsory assistance order shall be made for the purpose of providing assistance in the form of intensive care and support that is necessary to protect the child from suicide or any other life threatening or serious self destructive behaviour.

- (2) The court shall make a compulsory assistance order where
- (a) the child will receive treatment, therapy or other services that will assist the child to deal with the problems that have led the child to be a danger to himself;
  - (b) the programme offered to the child is likely to lead to a significant improvement in his circumstances; and
  - (c) the necessary resources have been allocated by the person who will be required to provide intensive supervision of the child.
- (3) A compulsory assistance order shall provide for the following matters:
- (a) the person who is to be responsible under the order for the child;
  - (b) the place at which the child is to reside;



- (c) a description of the therapeutic programme and other support to be provided to the child;
- (d) the maintenance of 24 hour supervision of the child;
- (e) the duration of the order; and
- (f) such other matters as the court may determine.

#### **Support services order**

**45.(1)** The court may make an order directing a person or child care centre named in the order to provide support for a child.

- (2) The court shall not make an order under subsection (1) unless
  - (a) it gives notice of its intention to consider making the order to the person or child care centre who would be required to provide support under the order;
  - (b) the person or child care centre is given an opportunity to appear and be heard by the court before the court makes that order;
  - (c) the person or child care centre consents to the making of the order; and
  - (d) the views of the child in relation to the proposed order have been taken into account having regard to the age and maturity of the child.
- (3) The court may require the submission of a report by such person or child care centre detailing
  - (a) the progress or outcome of the supervision; and
  - (b) whether the purpose of the supervision has been achieved.

#### **Counselling or treatment order**

**46.(1)** A counselling or treatment order shall be made for the purpose of providing counselling, therapy or any form of treatment necessary for the well-being of the child.

- (2) The court may make an order requiring
  - (a) a child to attend counselling, a therapeutic or treatment programme relating to an abusive behaviour; and
  - (b) the parent of the child to take whatever steps are necessary to enable the child to participate in counselling, a therapeutic or treatment programme.
- (3) The court shall not make an order under this section
  - (a) if the child is or has been the subject of criminal proceedings arising from the same abusive behaviour; or
  - (b) unless the court has been presented with and has considered the provisions of a plan that outlines the therapeutic programme proposed for the child.

**Contact order**

47. Where a child is the subject of proceedings before a court, the court may, on an application made by any party to the proceedings, make an order for the following:

- (a) stipulating minimum requirements concerning the frequency and duration of contact between the child and his parent, relatives or other persons of significance to the child;
- (b) requiring that contact with a specified person be supervised;
- (c) denying contact with a specified person if contact with that person is not in the best interest of the child;
- (d) requiring that contact be supervised by the Director.

**Order to accept undertakings**

48.(1) Where parents make or agree to an undertaking in relation to the proper care and guardianship of a child, the court may make an order to accept such undertaking.

- (2) An undertaking shall be in writing and signed by the person who gives the undertaking.
- (3) The Director may, at any time, discharge a child from its care with or without an undertaking being given by the parent of the child.
- (4) In determining whether or not to exercise the power under subsection (3), the Director shall have regard to the following:
- (a) any views expressed by the child as to whether he wishes the power to be exercised;
  - (b) any views expressed by the child as to whether he intends to return to the care and under the protection of his parents; and
  - (c) whether the exercise by the Director of that power is likely to protect the safety, welfare and well-being of the child.

#### **Provision of accommodation**

- 49.(1) The Authority may support, provide, equip and maintain a child care centre for the accommodation of children in its care.
- (2) The Authority may discharge its functions under this section by making arrangements with private bodies for the accommodation of children in its care.

#### **Maintenance of children**

- 50.(1) The Director may arrange with the parents of a child for a contribution according to their means towards the maintenance of the child who is in the care of the Authority.
- (2) Where an agreement cannot be reached in relation to subsection (1), the Director may apply to the court for an order for the maintenance of the child, having regard to the means of the parent.
- (3) Where a person, other than the parent is liable to maintain a child, an order under this section may be made against that person.

- (4) The court may direct that any amount payable under this section is paid to the Director.
- (5) An order made under this section shall remain in force as long as the child is in the care of the Authority.
- (6) A person may, at any time, apply to the court to vary or discharge an order made under this section.

## PART V

### CHILD CARE CENTRES

#### **Principles guiding the operation of child care centres**

**51.** A decision made under this Part shall be made in accordance with the following principles:

- (a) the best interests of the child shall be of paramount consideration;
- (b) a child care centre shall provide care that is safe, positive and nurturing;
- (c) a child care centre shall promote the educational, social and developmental well being of a child; and
- (d) a child shall receive services that meet his individual needs, including the needs of a child with a disability, and enhance his or her physical, emotional, cognitive, social and cultural development.

#### **Foster care**

**52.(1)** Where an order made by a court under this Act, the Director may place the child with a person who is willing to undertake the care and protection of the child.

(2) An application to foster a child shall be made to the Director in the prescribed form.

- (3) Foster care placements shall be made in accordance with such regulations as may be prescribed.
- (4) A foster parent shall have care responsibility for the child.
- (5) Where a foster child
- (a) leaves a foster home; or
  - (b) is unlawfully taken from a foster home,
- the foster parent shall immediately notify the Director.
- (6) A person shall not induce or attempt to induce a child to
- (a) leave a foster home; or
  - (b) remain away from or not return to a foster home.
- (7) A person who contravenes subsection (2), (3), (5) or (6) is guilty of an offence and is liable on summary conviction of \$25 000 or to imprisonment for a term of 5 years or to both.

#### **Approved child care centres**

**53.** The Minister may grant approval for child cares in accordance with such regulations as may be prescribed.

#### **Purpose of approved child care centre**

- 54.(1)** An approved child care centre shall provide substitute family care for a child until such time as
- (a) the parent is able to provide adequate care to meet the basic needs of the child; or
  - (b) the child can be reunited with his family or arrangements are made for the custody or other permanent placement of the child.
- (2) The staff of the approved child care service and the Director shall assist the child to become reunited with his parent.

(3) Where a child has been returned from an approved child care centre, the Director shall keep in regular contact with the child and his family until the completion of any order made under this Act or until the discharge of that order.

**Delegated care responsibility at approved child care service**

55. Where a child has been placed in an approved child care centre pursuant to the provisions of this Act, the child care centre shall have delegated care responsibility for the child.

**Contact with parents and relatives**

56.(1) The approved child care centre and the Director shall maintain contact

(a) with the parent or relatives of the child in the approved child care centre; and

(b) between the child and the parent or relatives of the child.

(2) A person shall not remove a child from an approved child care centre without the consent of the manager of the centre.

(3) A person shall not induce or attempt to induce a child to

(a) leave a child care centre; or

(b) remain away from, or not return to a child care centre.

(4) Where a child

(a) leaves an approved child care centre; or

(b) is unlawfully taken from a approved child care centre,

the manager of the centre shall immediately notify the Director.

(5) A person who contravenes subsection (2), (3) or (4) is guilty of an offence and is liable on summary conviction of \$25 000 or to imprisonment for a term of 5 years or to both.

**Application for a recovery order**

**57.(1)** Where a child

- (a) leaves a foster home or a child care centre; or
- (b) is unlawfully taken from a foster home or a child care centre,

the Director, the foster parent or the manager of a child care centre may apply for a recovery order under section 43.

(2) Where a child leaves a foster home or a child care centre, the court shall

- (a) order the Director to conduct an investigation into the reasons for the child leaving the foster home and a child care centre; and
- (b) pending the investigation under paragraph (a) place the child into a place of safety to be determined by the Director.

(3) The findings of the investigation conducted by the Director pursuant to subsection (2)(a) shall be submitted to the court within 2 months of the order made under subsection (2)(a).

(4) Upon receipt of the findings of the Director from the investigation conducted pursuant to subsection (3) the court shall make the order or make the decision required in the circumstances.

**Order to contribute**

**58.(1)** The court may order a parent of a child placed in a child care centre to contribute towards the maintenance of the child.

(2) The amount contributed pursuant to subsection (1) shall be reasonable and within the means of the parent and may be varied by the court if there is a change in the circumstances of the

- (a) parent; or
- (b) child.

(3) An order for contribution made under subsection (1) shall remain in force as long as the child is in the child care centre, but a parent contributing may, at any time, apply to the court for the order to be varied or discharged on the ground that the circumstances have changed since the order was made.

#### **Corporal punishment in child care centres**

**59.(1)** Corporal punishment, severe or frightening measures shall not be inflicted on a child placed in a child care centre in accordance with the provisions of this Act.

(2) A person who imposes corporal punishment, severe or frightening measures on a child placed in a child care centre is guilty of an offence and is liable on summary conviction of \$10 000 or to imprisonment for a term of 2 years or to both.

### **PART VI**

#### **OFFENCES**

##### **Unsupervised or unattended child**

**60.(1)** Any person having the care, custody or control of a child under 12 years of age who leaves the child unsupervised or unattended for an unreasonable period of time without making reasonable provision for the supervision and safety of the child is guilty of an offence and liable on summary conviction to a fine of \$25 000 or to imprisonment for a term of 5 years or to both.

(2) For the purpose of this section, “unsupervised or unattended” refers to a situation where a child is engaged in behaviour or activity which may be considered potentially dangerous to himself or others in a setting where no evidence of adult supervision exists.



**Cruelty to children**

**61.** A parent or any person over the age of 18 years who having the custody, charge or care of any child

- (a) abuses or exposes a child to abuse;
- (b) exposes a child to danger;
- (c) fails to protect a child from abuse;
- (d) abandons or deserts a child;
- (e) neglects a child;
- (f) mistreats a child; or
- (g) causes, whether by act or omission, a child to be in need of protection,

is guilty of an offence and is liable on summary conviction to a fine of \$100 000 or to imprisonment for a term of 10 years or to both.

**Personation**

**62.** A person who personates a member of the Board, the Director or a member of the staff of the Authority is guilty of an offence and is liable on summary conviction to a fine of \$10 000 or to imprisonment for a term of 2 years or to both.

**Obstruction**

**63.** A person who obstructs or threatens the Director or a member of staff of the Authority while executing his duty under this Act is guilty of an offence and is liable on summary conviction to a fine of \$25 000 or to imprisonment for a term of 5 years or to both.

PART VII

MISCELLANEOUS

**Exemption from duties and taxes**

64. Notwithstanding any other enactment, the Authority is exempt from the payment of

- (a) customs duties and any other duties or taxes on goods imported for its own use;
- (b) any tax in respect of lands owned by the Authority;
- (c) stamp duty on its documents; and
- (d) income tax and any other tax imposed on income or profits of persons.

**Regulations**

65. The Minister may make Regulations generally for the purposes of giving effect to this Act.

**Amendment of Schedule**

66. The Minister may by order amend the *First Schedule*.

**Savings and transitional**

67.(1) With effect from the commencement of this Act

- (a) any contract entered into, by or on behalf of the Child Care Board, shall be deemed to have been entered into, by or on behalf of the Authority;
- (b) any right, privilege, duty or obligation conferred or imposed on the Child Care Board, and existing immediately before the commencement of this Act, shall be deemed to be conferred or imposed on the Authority;

- (c) the services of a person who immediately before the commencement of this Act was employed by the Child Care Board, and who is employed by the Authority, shall be treated as continuous for purposes of calculating pensionable service;
  - (d) all assets and liabilities of the Child Care Board are deemed to be transferred to the Authority; and
  - (e) any powers and remedies as to the taking and resisting of legal proceedings for the ascertaining, perfecting or enforcing of all rights or liabilities vested in the Child Care Board before the commencement of this Act shall be deemed to be conferred or imposed on the Authority.
- (2) Subject to this Act, the officers and other employees who, immediately before the commencement of this Act, were members of the staff of the Child Care Board established by the former Act shall upon that date comprise the staff of the Authority.
- (3) The officers and employees referred to in subsection (2) shall retain all rights in respect of pension, gratuity or other like benefit accruing to them immediately before the commencement of this Act.
- (4) Private child care centres registered under the former Act shall continue to function as if they were registered under this Act.

#### **Repeal and savings**

- 68.(1) The following Acts are repealed:
- (a) the *Child Care Board Act*, Cap. 381;
  - (b) the *Prevention of Cruelty Act*, Cap. 145;
  - (c) the *Protection of Children Act*, Cap. 146A; and
  - (d) the *Young Persons Protection Act*, Cap. 193.
- (2) The
- (a) *Child Care Board Regulations, 1985* (S.I. 1985 No. 39); and

(b) *Child Care Board (Private Child Care Centres) Regulations, 1986*  
(S.I. 1986 No. 69)

shall remain in force as if made under this Act in so far as they are not inconsistent with this Act, until revoked by any regulation made under this Act.

**Consequential amendments**

69. The enactments set out in Column 1 of the *Second Schedule* are amended in the manner specified in Column 2 of the *Second Schedule*.

**Commencement**

70. This Act shall come into operation on a date to be fixed by proclamation.

**FIRST SCHEDULE***(Section 10)**Constitution and Procedure of the Child Protection Board***Constitution of Board**

1. The Board shall comprise
  - (a) a Chairman and Deputy Chairman; and
  - (b) such other members as the Minister may appoint by instrument in writing.

**Temporary appointment of Board**

2. The Minister may, in accordance with paragraph 1(b), appoint any person to act temporarily in the place of any director who is absent from Barbados or is unable to act.

**Tenure**

- 3.(1) A director holds office for such period as the Minister determines unless he resigns or his appointment is revoked before the end of that period.
- (2) Every director is, on the expiration of the period of his appointment, eligible for re-appointment for a further period.
- (3) Where a vacancy is created by the death, resignation or removal from office of a director, a person may be appointed in accordance with paragraph 1(b) to fill that vacancy.

**Resignation of Chairman and Deputy Chairman**

4. The Chairman or Deputy Chairman may at any time resign his office by instrument in writing addressed to the Minister and, upon the receipt by the Minister of the instrument, the Chairman or Deputy Chairman ceases to be

Chairman or Deputy Chairman and, if the instrument so specifies, also ceases to be a director.

**Resignation of Director**

5. A director, other than the Chairman or Deputy Chairman may at any time resign his office by instrument in writing addressed to the Minister and transmit the instrument through the Chairman and, from the date of the receipt by the Minister of the instrument, the director ceases to be a director.

**Automatic termination of membership**

6. Any director who fails, without reasonable excuse, to attend 3 consecutive meetings of the Board ceases to be a director and is not eligible for appointment to the Board until the expiry of 3 years from the date when he ceased to be a director.

**Revocation of membership**

7. The Minister may at any time by instrument in writing revoke the appointment of any director.

**Notice in *Official Gazette***

8. The appointment and the cessation of appointment of a director shall be notified in the *Official Gazette*.

**Seal**

9.(1) The seal of the Board shall be kept in the custody of the Chairman or Deputy Chairman, or such officer of the Board as the Board approves, and may be affixed to documents or instruments pursuant to a resolution of the Authority in the presence of the Chairman or Deputy Chairman and the Secretary.

(2) The seal of the Board shall be authenticated by the signature of the Chairman and the Secretary.

(3) All documents or instruments, other than those required by law to be under seal, and all decisions of the Authority may be signified under the hand of the Chairman or Deputy Chairman.

### **Meetings**

10. The Board shall meet at least once a month and at such other times as may be necessary or expedient for the transaction of its business.

### **Special meetings**

11. The Chairman or, in the event of his absence from Barbados or inability to act as such, the Deputy Chairman may at any time call a meeting of the Board and shall call a meeting within 7 days of

- (a) the receipt by him of a request for that purpose addressed to him in writing and signed by 3 other directors;
- (b) receiving a direction to that effect addressed to him in writing and signed by the Minister.

### **Presiding at meetings**

12. The Chairman or, in his absence, the Deputy Chairman shall preside at all meetings of the Board and, in the case of the absence of both, the directors present and constituting a quorum shall elect a temporary Chairman from among their number who shall preside at the meeting.

### **Quorum**

13. The majority of the directors shall constitute a quorum.

### **Decisions**

14. The decisions of the Board shall be by a majority of votes and, in any case in which the voting is equal, the Chairman, the Deputy Chairman or temporary Chairman presiding at the meeting has, in addition to an original vote, a second or casting vote.

### **Minutes**

**15.(1)** Minutes in proper form of each meeting shall be kept by the Secretary or such officer as the Board appoints for the purpose and shall be confirmed in writing at the next meeting by the Chairman or Deputy Chairman.

(2) Confirmed minutes of meetings shall be submitted to the Minister within one month of the date of the meeting at which they were confirmed.

### **Attendance of non-members at meetings**

**16.(1)** The Chairman may invite any person to attend a meeting of the Board where the Board considers it necessary to do so.

(2) A person referred to in subparagraph (1) may take part in the deliberations of the Board but shall not vote on any matter.

### **Appointment of committees**

**17.(1)** The Board may appoint committees to assist with the proper discharge of its functions subject to such conditions or restrictions as the Board imposes.

(2) The number of members of a committee appointed by the Board and the terms of office of the members shall be fixed by the Board.

(3) A committee appointed by the Board under this paragraph may include persons who are not directors but such persons shall not comprise more than one third of the membership of the committee.

### **Remuneration**

**18.** Where a person other than a director is appointed to a committee under paragraph 17, the Board may, with the approval of the Minister, determine the remuneration and allowances to be paid to that person.



**Validity of decisions of the Board**

**19.** Any act done or proceeding taken by the Board under this Act or any regulations made thereunder may not be questioned on the ground of

- (a) the existence of any vacancy in the membership of or of any defect in the constitution of the Board;
- (b) any omission, defect or irregularity that does not affect the merits of the case.

**SECOND SCHEDULE**

*(Section 69)*

**CONSEQUENTIAL AMENDMENTS**

Column 1	Column 2
<i>Enactments</i>	<i>Amendments</i>
1. <i>Adoption Act, Cap. 212</i>	<p>1. Section 2 is amended by inserting the following in the appropriate alphabetical order:</p> <p align="center">"Director" means the Director of Child Protection appointed in accordance with section 12 of the <i>Child Protection Act, 2023 (Act 2023- )</i>;"</p> <p>2. All references to the words "Child Care Board" are deleted and the word "Director" is substituted.</p> <p>3. Section 12 is deleted.</p>
2. <i>Education Act, Cap. 41</i>	<p>Insert immediately after section 53:</p> <p><b>"Day Nurseries</b></p> <p><b>53A.(1)</b> All day nurseries shall be under the control and management of the Minister.</p> <p>(2) All day nurseries shall be maintained out of moneys voted by Parliament.</p> <p>(3) Corporal punishment, severe or punishing measures shall not be inflicted on a child attending a day nursery.</p>

*Second Schedule - (Concl'd)*

## CONSEQUENTIAL AMENDMENTS - (Concl'd)

Column 1	Column 2
<i>Enactments</i>	<i>Amendments</i>
2. <i>Education Act, Cap. 41 - (Concl'd)</i>	<p>(4) A person who contravenes subsection (3) is guilty of an offence and is liable on summary conviction to a fine of \$10 000 or to a term of imprisonment for 2 years or to both.</p> <p>(5) The Minister may make regulations in respect of the control and management of day nurseries.</p> <p>(6) For the purposes of this section "day nursery" means an establishment or place providing temporary care, training or guidance for a child between the ages of 3 months to 5 years.</p> <p>(7) This section shall come into operation on a date to be fixed by Proclamation."</p>
3. <i>Public Finance Management Act (Act 2019-1)</i>	<p>The <i>First Schedule</i> is amended by deleting paragraph 9 and substituting the following:</p> <p style="padding-left: 40px;">"9. Child Protection Authority".</p>
4. <i>Statutory Boards (Pensions) Act, Cap. 384</i>	<p>1. The <i>First Schedule</i> is amended in paragraph 7 by deleting the words "Child Care Board" and substituting the words "Child Protection Authority".</p> <p>2. The <i>Second Schedule</i> is amended by deleting paragraph 7 and substituting the following:</p> <p style="padding-left: 40px;">"The Child Protection Authority established by the <i>Child Protection Act, 2023 (Act 2023- )</i>".</p>

Read three times and passed the House of Assembly this  
day of \_\_\_\_\_, 2023.

**Speaker**

Read three times and passed the Senate this \_\_\_\_\_ day of  
, 2023.

**President**

**CHILD PROTECTION BILL, 2023**

**EXPLANATORY MEMORANDUM**

The Child Protection Bill makes provision for the reform of the law on the care and protection of children in Barbados.

**PART I  
PRELIMINARY**

- Clause 1:** states the short title.
- Clause 2:** sets out the definitions that will be utilised throughout the Bill.
- Clause 3:** identifies the purpose of the Bill.
- Clause 4:** sets out the principles that should be applied in the administration of the proposed legislation.
- Clause 5:** sets out the factors used to determine when a child is in need of “care and protection” for the purposes of the proposed legislation.
- Clause 6:** states that the Director of Child Protection may request the assistance of certain agencies in the interest of promoting or ensuring the safety or welfare of a child and imposes a duty on the agencies to use their best endeavours to comply with requests for assistance from the Director.
- Clause 7:** gives the child the right to participate in decisions to be made pursuant to the proposed legislation which are likely to impact that child’s life.

18  
2

PART II  
ADMINISTRATION

- Clause 8:** makes provision for the establishment of a Child Protection Authority as a body corporate.
- Clause 9:** states the powers and duties of the Child Protection Authority.
- Clause 10:** makes provision for the establishment of a Child Protection Board which shall be responsible for the formulation of the policy of the Authority and for the general administration of the Authority. The *First Schedule* makes provision for the composition of the Board and rules of procedure for its operation.
- Clause 11:** states that the remuneration and allowances of the Directors of the Child Protection Board will be determined by the Minister.
- Clause 12:** makes provision for the appointment of the Director of Child Protection and sets out the duties and responsibilities of the Director generally.
- Clause 13:** makes provision for the appointment and employment of staff of the Child Protection Authority.
- Clause 14:** makes provision for the pension rights of public officers seconded from the Public Service to perform services with the Child Protection Authority.
- Clause 15:** makes provision for the saving of pensions for seconded from the Public Service to perform services with the Child Protection Authority.
- Clause 16:** sets out the role of the Minister in the context of the proposed legislation.

- Clause 17:** imposes an obligation on the Child Protection Authority to prepare a report on its proceeding in relation to child care and protection. The clause also require the Minister to have the report laid in Parliament. The Report shall be published by the Authority on consultation with the Minister.
- Clause 18:** identifies what shall constitute the funds of the Child Protection Authority.
- Clause 19:** specifies how the funds of the Child Protection Authority may be spent.
- Clause 20:** imposes an obligation on the Child Protection Authority to keep proper books of account in accordance with International Accounting Standards and practices and instructions of the Accountant General under the *Public Finance Management Act, 2019* (Act 2019-1).
- Clause 21:** imposes an obligation on the Child Protection Authority to submit reports and information as required by Part IX of the *Public Finance Management Act, 2019* (Act 2019-1).

PART III  
INTERVENTIONS, REPORTS AND INVESTIGATIONS

- Clause 22:** sets out the circumstances where the Director of Child Protection may intervene to assist a child in possible need of care and protection.
- Clause 23:** sets out the circumstances where a request for intervention of the Director of Child Protection can be made.
- Clause 24:** imposes an obligation on certain persons to report or cause to be reported circumstances where a child may require care and

protection to the Director of Child Protection or the Police Service.

- Clause 25:** requires the Director to investigate reports made pursuant to clause 24.
- Clause 26:** requires the Director to keep records of reports, action or disposition of dealing with a child pursuant to clause 24.
- Clause 27:** makes provision for certain legal immunities to apply to persons who make reports pursuant to clause 24.
- Clause 28:** makes provision for the circumstances where a Director is required to conduct an investigation and an assessment in relation to whether a child requires care and protection.
- Clause 29:** makes provision for the actions that a Director may take after conducting an investigation and an assessment in relation to whether a child requires care and protection.
- Clause 30:** sets out the circumstances where a Director may decide not to take action in relation to whether a child requires care and protection.
- Clause 31:** sets out the circumstances where a Director may decide to remove a child from a place or premises where he believes the child is in immediate or imminent jeopardy and there is not enough time to apply to the court and the procedure to be followed by the Director after such removal.

PART IV  
CARE AND PROTECTION ORDERS

- Clause 32:** identifies the various orders that can be made by the court in relation to a child who may be in need of care and protection.



- Clause 33:** makes provision for the court to make a residential protection and treatment centre order in certain circumstances where the child will be required to reside in a residential protection and treatment centre.
- Clause 34:** makes provision for the court to make an emergency protection order where the child may require care and protection in certain circumstances as a matter of urgency.
- Clause 35:** makes provision for the court to make an assessment order which may be done as a predicate to enabling the court to decide on another order that may be required in respect of a child in need of care and protection.
- Clause 36:** makes provision for the court to make a social inquiry report which may be done as a predicate to enabling the court to decide on another order that may be required in respect of a child in need of care and protection.
- Clause 37:** makes provision for the court to make a care order which is made for the purpose of removing a child who is in need of care and protection and putting them in the care of the Director of Child Protection.
- Clause 38:** makes provision for the court to require the Director of Child Protection to prepare a care plan before a care order is made pursuant to clause 37.
- Clause 39:** states that a child care centre shall have delegated care responsibility of child under a care order made under clause 37. The term “delegated care responsibility” is defined by clause 2.
- Clause 40:** makes provision for the court to make a supervision order on the application of the Director of Child Protection where a

person recommended by the Director to supervise the child in need of care and protection.

- Clause 41:** states the duties of the supervisor recommended pursuant to clause 40.
- Clause 42:** makes provision for the court to make a custody care order which involves placing the child in need of care and protection into the custody of the Child Protection Authority.
- Clause 43:** makes provision for the court to make a recovery order to recover a child where that child was unlawfully taken away from a person who has care responsibility for the child, run away or is missing.
- Clause 44:** makes provision for the court to make a compulsory assistance order to provide intensive care and support to protect the child from suicide or any other life threatening or serious self destructive behaviour.
- Clause 45:** makes provision for the court to make a support services order directing a person or child care centre named in the order to provide support for a child.
- Clause 46:** makes provision for the court to make a counselling or treatment order for the purpose of providing counselling, therapy or any form of treatment necessary for the well-being of the child
- Clause 47:** makes provision for the court to make a contact order which specifies the circumstances in which persons may have contact with a child in need of care and protection.

- Clause 48:** makes provision for the court to accept an undertaking devised with the parent in relation to the proper care and guardianship of a child.
- Clause 49:** makes provision for the Child Protection Authority to support, provide, equip and maintain a child care centre for the accommodation of children in its care.
- Clause 50:** makes provision for the Director of Child Protection to arrange with the parents of a child for a contribution according to their means towards the maintenance of the child who is in the care of the Authority.

PART V  
CHILD CARE CENTRES

- Clause 51:** sets out the principles that are to be used to guide the operation of child care centres.
- Clause 52:** makes provision for procedures to be observed in relation to foster care.
- Clause 53:** empowers the Minister to prescribe the grant approval of child care centres by regulations.
- Clause 54:** states the purpose of child care centres.
- Clause 55:** states that child care centres shall have delegated responsibility of a child. The term “delegated care responsibility” is defined by clause 2.
- Clause 56:** imposes a duty on the child care centre and the Director to maintain contact with the parents or relatives of a child residing in the child care centre and makes provision for

approved child care centres and Director to facilitate contact between the child and his parents and relatives.

**Clause 57:** sets out the procedure for an application for a recovery order pursuant to clause 43.

**Clause 58:** makes provision for the court to make an order to direct a parent of a child to contribute to the maintenance of a child residing in a child care centre.

**Clause 59:** prohibits the infliction of corporal punishment, severe or frightening measures on a child placed in a child care centre.

#### PART VI OFFENCES

**Clause 60:** states that leaving a child unsupervised or unattended is an offence.

**Clause 61:** makes it an offence for persons having custody, charge or care of a child to abuse, abandon, neglect, mistreat a child or expose the child to danger, fail to protect the child or cause a child by act or omission to require care and protection.

**Clause 62:** makes it an offence for a person to impersonate a member of the Board, the Director or a member of staff of the Authority.

**Clause 63:** makes it an offence for a person to obstruct or threaten the Director or a member of staff of the Authority from carrying out their duties as set out in this Bill.

PART VII  
MISCELLANEOUS

- Clause 64:** exempts the Authority from the payment of certain duties and taxes.
- Clause 65:** empowers the Minister to make regulations to give effect to the legislation.
- Clause 66:** empowers the Minister to amend the *First Schedule* by order.
- Clause 67:** makes provision for the transfer of assets, liabilities, responsibilities, duties, privileges and obligations from the Child Care Board established under the *Child Care Board Act*, Cap. 381 to be repealed by the current legislation and the Authority established under this legislation;
- Clause 68:** makes provision for the repeal of cited Acts and the saving of certain cited regulations.
- Clause 69:** states that consequential amendments to enactments to facilitate the operation of the proposed legislation is addressed in the *Second Schedule*.
- Clause 70:** makes provision for the Act to come into operation on a date fixed by proclamation.



**CHILD JUSTICE  
BILL, 2023**





2023/03/07

**OBJECTS AND REASONS**

This Bill will make provision for

- (a) the reform of the criminal law applicable to children; and
- (b) the repeal of the
  - (i) *Juvenile Offenders Act*, Cap. 138; and
  - (ii) *Reformatory and Industrial Schools Act*, Cap. 169.

*Arrangement of Sections*

**PART I**

**PRELIMINARY**

1. Short title
2. Interpretation
3. Purpose

**PART II**

**APPLICATION AND CRIMINAL RESPONSIBILITY**

4. Application of Act
5. Age of criminal responsibility
6. Principles to be applied when dealing with children

**PART III**

**ASSESSMENT OF A CHILD**

7. Apprehension
8. Assessment
9. Persons to attend assessment

10. Powers and duties of probation officer prior to assessment
11. Powers and duties of probation officer at assessment

#### PART IV

#### SECURING ATTENDANCE OF A CHILD AT INITIAL INQUIRY

12. Methods of securing attendance of a child at initial inquiry
13. Summons
14. Written Notice
15. Uncertainty as to age of person
16. Release of child into care of the parent or the appropriate adult before the initial inquiry
17. Director of Public Prosecutions may authorise the release of a child
18. Duty of police officer and person into whose care a child is released
19. Release of child on recognizance prior to initial inquiry
20. Child accused of certain offences not to be released from detention
21. Detention in a secure residential facility
22. Death, injury or illness of a child in police custody
23. Register of children waiting to attend an initial inquiry

PART V

INITIAL INQUIRY AND DIVERSION

24. Nature and objectives of an initial inquiry
25. Persons to attend an initial inquiry
26. Procedure relating to an initial inquiry
27. Powers and duties of a magistrate with respect to an initial inquiry
28. Failure to appear at an initial inquiry
29. Release of child into care of parent or appropriate adult
30. Detention of child after first appearance before a magistrate
31. Postponement of an initial inquiry
32. Postponement of initial inquiry for a more detailed assessment
33. Decision regarding diversion
34. Purposes of diversion
35. Child to be considered for diversion under certain circumstances
36. Levels of diversion options
37. Minimum standards applicable to diversion and diversion options
38. Failure to comply with diversion direction
39. Development of diversion options

- 40. Protection proceedings
- 41. Referral of matter for trial and detention pending trial

PART VI

COURT PROCEEDINGS

- 42. Conduct of proceedings relating to child in Court
- 43. Treatment of a child in Court
- 44. Criminal responsibility
- 45. Separation and joinder of trials involving child and adult
- 46. Time limits relating to conclusion of trials
- 47. Court may divert matter
- 48. Privacy and confidentiality
- 49. Prohibition of the publication of certain matters

PART VII

SENTENCING OF A CHILD

- 50. Child to be sentenced in accordance with this Part
- 51. Pre-sentence reports
- 52. Purposes of sentencing
- 53. Community based sentences

- 54. Restorative justice sentences
- 55. Family group conference
- 56. Sentences involving correctional supervision
- 57. Sentence with a compulsory residential requirement
- 58. Referral to secure residential facility
- 59. Referral to prison
- 60. Postponement or suspension of passing sentence
- 61. Penalty in lieu of fine or imprisonment
- 62. Prohibition on certain forms of punishment
- 63. Notice to parent of child
- 64. Proceedings to show cause

#### PART VIII

#### LEGAL REPRESENTATION

- 65. Child to be provided with legal representation
- 66. Requirements to be complied with by attorney-at-law

#### PART IX

#### GENERAL PROVISIONS AS TO PROCEEDINGS IN COURT

- 67. Extension of power to take depositions

## PART X

## SECURE RESIDENTIAL FACILITY

68. Secure residential facility
69. Designation of a secure residential facility
70. Designation of the Government Industrial School as a secure residential facility
71. Detention of a child
72. Child Justice Board
73. Functions of the Child Justice Board
74. Appointment of a Director
75. Staff
76. Status of certain officers of a secure residential facility
77. Maintenance of records
78. Establishment of secure residential facility programmes
79. Medical or Psychiatric Treatment
80. Transfer of a child to another secure residential facility
81. Emergency
82. Notification of death, injury or serious illness

- 83.** Resources of the secure residential facility
- 84.** Responsibilities of a child in custody
- 85.** Infractions
- 86.** Misconduct
- 87.** Power of the Director to impose discipline on a child in a secure residential facility
- 88.** Searches
- 89.** Maintenance of order in secure residential facility
- 90.** Grievance procedures
- 91.** Discharge of child from a secure residential facility
- 92.** Discharge approval by Minister
- 93.** Appeal

**PART XI**  
**REINTEGRATION**

- 94.** Establishment of Reintegration Board
- 95.** Functions of the Reintegration Board
- 96.** Remuneration of the members of Reintegration Board
- 97.** Staff



- 98. Expenses
- 99. Confidentiality
- 100. Protection of members of the Reintegration Board
- 101. Eligibility for grant of reintegration order
- 102. Application for a reintegration order
- 103. Grant of a reintegration order
- 104. Reintegration order
- 105. Revocation or suspension of reintegration order
- 106. Forfeiture of reintegration
- 107. Reapplication
- 108. Reintegration continuing education order

PART XII

MISCELLANEOUS

- 109. Regulations
- 110. Amendment of Schedules
- 111. Transitional
- 112. Consequential amendments
- 113. Repeal

**114. Commencement**

FIRST SCHEDULE

SECOND SCHEDULE

THIRD SCHEDULE

FOURTH SCHEDULE

FIFTH SCHEDULE

SIXTH SCHEDULE

## **BARBADOS**

A Bill entitled

An Act to provide for the reform of the criminal law applicable to children  
and the repeal of the

- (a) *Juvenile Offenders Act*, Cap. 138; and
- (b) *Reformatory and Industrial Schools Act*, Cap. 169.

ENACTED by the Parliament of Barbados as follows:

PART I

PRELIMINARY

**Short title**

1. This Act may be cited as the *Child Justice Act, 2023*.

**Interpretation**

- 2.(1) In this Act,

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

“apprehension” means where a police officer arrests a child in conflict with the law;

“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 18 years, but excludes a parent of the child;

“assessment” means the assessment of a child by a probation officer conducted in accordance with section 8;

“attorney-at-law” has the meaning assigned to it by the *Legal Profession Act, Cap. 370A*;

“child” means a person under the age of 18 years;

“Child Protection Authority” means the Authority established by section 8 of the *Child Protection Act, 2023 (Act 2023-)*;

“Child Justice Board” means the Board appointed in accordance with section 72(1);

- “child care centre” has the meaning assigned to it by section 2 of the *Child Protection Act, 2023 (Act 2023-)*;
- “child in conflict with the law” means a child who is alleged to have committed an offence;
- “community based service” means work for a community organisation or other work of value to the community performed by a child without payment;
- “community based sentence” means a sentence referred to in section 53;
- “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 suitable person designated by the Court;
- “correctional supervision” means the sentence referred to in section 56 requiring a child to be placed under the supervision and guidance of a probation officer;
- “Court” means the Magistrate’s Court or the Criminal Division of the High Court where applicable;
- “Director” means the Director of a secure residential facility appointed under section 74;
- “Director of Child Protection” means the Director in accordance with section 12 of the *Child Protection Act, 2023 (Act 2023-)*;
- “detention” includes confinement in a prison, secure residential facility or a place of safety;
- “diversion” means the removal of cases of children alleged to have committed an offence from the formal court procedures and the adoption of informal procedures in relation to such children, pursuant to Part V;
- “diversion option” means a plan or programme with a specified content and duration set out in three levels under section 36;
- “family group conference” means a gathering convened by a probation officer as a diversion or sentencing option under section 55;

“family time order” means an order requiring a child to spend a specified number of hours with his family;

“good behaviour order” means an order requiring a child to abide by an agreement made between the child and his family to comply with certain standards of behaviour;

“initial inquiry” means the procedure conducted in accordance with Part V, which takes place after an assessment and before trial in a court;

“natural father” includes a man who has been adjudged to be the biological father of a child;

“natural mother” means a woman who gave birth to a child;

“natural parent” means a natural mother or a natural father;

“parent” includes

- (a) a natural 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 12 months and who has a continuing relationship with the child; or
- (c) a legal guardian of the child who has custody or guardianship rights in relation to the child,

but does not include a person acting as a care giver on behalf of the Child Protection Authority;

“parental responsibility”

- (a) means the duties, powers, responsibilities and authority; and
- (b) includes the rights and obligations

which by any relevant enactment in force, the parent of a child has in relation to that child;

“place of assessment” means a place or institution selected by a probation officer to conduct an assessment;

“place of safety” means

- (a) a child care centre designated by the Child Protection Authority;
- (b) a hospital;
- (c) an institution or a place designated as a place of safety by the Child Protection Authority;
- (d) an institution or a place where the person in charge will temporarily receive and take care of a child in conflict with the law and which, in the opinion of the Court, may be a safe and secure place to keep such a child; or
- (e) a residential protection and treatment centre

but does not include a secure residential facility or a prison;

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

“Police Service” has the meaning assigned to it by the *Police Act*, Cap. 167;

“positive peer association order” means an order requiring a child to associate with a person whom the probation officer has reason to believe can contribute to the positive behaviour of the child;

“prison” has the meaning assigned to it by the *Prisons Act*, Cap. 168;

“probation officer” means an officer appointed under the *Probation of Offenders Act*, Cap. 146;

“prosecutor” shall refer to the Director of Public Prosecutions in relation to indictable offences or a police prosecutor in relation to summary offences;

“Reintegration Board” means the Board established in accordance with section 94;

“reintegration order” means the order granted by the Reintegration Board pursuant to section 103;

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

“residential protection and treatment centre” has the meaning assigned to it by section 2 of the *Child Protection Act, 2023* (Act 2023-);

“reporting order” means an order requiring a child to report to a person specified by a magistrate at a time specified in such order so as to enable the person to monitor the behaviour of the child;

“restorative justice” means the promotion of reconciliation, restitution and responsibility through the involvement of a child, the parents of a child, the members of family of the child, the victim and the community;

“secure residential facility” means a residential facility described under section 68;

“social media” means websites or applications that enable users to create and share content or to participate in social networking;

“supervision and guidance order” 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

“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.

(2) For the purposes of this Act, where a “place of safety” is determined to be a place of detention, it shall be a place that

- (a) is suitable for the detention of a child;
- (b) provides for a child to be detained separately from an adult; and
- (c) provides for a female child to be detained separately from a male child.



**Purpose**

3. The purpose of this Act shall be to ensure compliance with
- (a) the United Nations Convention on the Rights of the Child;
  - (b) the Universal Declaration of Human Rights;
  - (c) the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”);
  - (d) the United Nations Rules for the Protection of Juveniles Deprived of their Liberty; and
  - (e) the United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines).

**PART II**

**APPLICATION AND CRIMINAL RESPONSIBILITY**

**Application of Act**

4. This Act shall apply to
- (a) a child who is alleged to have committed an offence and who at the time of commission of that offence was under the age of 18 years; or
  - (b) a person referred to in paragraph (a) who attained the age of 18 years before proceedings that were instituted against him, pursuant to this Act, have been concluded.

**Age of criminal responsibility**

5. A child under the age of 12 years is not capable of committing a criminal offence.

**Principles to be applied when dealing with children**

6.(1) The Court or a person performing any function pursuant to the provisions of this Act shall be guided by the following principles:

- (a) 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 age, maturity and intellectual development;
- (d) a child shall be treated in a manner which takes into account his beliefs;
- (e) all procedures to be carried out pursuant to this Act shall be conducted and completed in a timely manner;
- (f) the parents and families of a child shall have the right to assist the 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
  - (i) circumstances of the child;
  - (ii) nature of the offence; and
  - (iii) interests of society,

and a child shall not be treated more severely than an adult would have been in the same circumstances;

- (h) a child lacking in family support, educational or employment opportunities shall have equal access to available services; and
- (i) every effort shall be made to ensure that a child receives equal treatment in relation to other children who have committed similar offences.

(2) A Court 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) where 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 a bond, upon the recommendation of the prosecutor, shall be considered; or
- (c) where the child must be 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 detained under this Act

- (a) shall be detained
  - (i) separately from adults;
  - (ii) with children of the same sex; and
  - (iii) 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
  - (i) to adequate food and water;
  - (ii) to medical treatment;
  - (iii) to a reasonable number of visits by a
    - (A) parent;
    - (B) appropriate adult;
    - (C) attorney-at-law;
    - (D) social worker;
    - (E) probation officer;

- (F) health worker;
  - (G) religious counsellor;
  - (iv) of access to reading material;
  - (v) to adequate exercise;
  - (vi) to access to recreational activities;
  - (vii) to access suitable equipment and assistive devices where the child has a disability; and
  - (viii) to adequate clothing.
- (4) For the purposes of this section, “disability” includes a long-term physical, mental, intellectual or sensory impairment which, in interaction with various barriers, may hinder a person from fully and effectively participating in society on an equal basis with others.

### PART III

#### ASSESSMENT OF A CHILD

##### **Apprehension**

- 7.(1) A police officer on apprehending a child shall promptly notify the parent of the child, or if the parent cannot be found, an appropriate adult, of the apprehension of the child.
- (2) Where a police officer has notified a parent or an appropriate adult of an apprehension, that police officer shall inform the child and a parent or appropriate adult in the presence of the child of the right of the child
- (a) to be informed of the nature of the offence or offences alleged to have been committed by the child;
  - (b) to seek the advice of an attorney-at-law;

- (c) to have a parent or an appropriate adult present where the child is questioned, interviewed or assessed in respect of an offence or offences alleged to have been committed by the child;
  - (d) to remain silent; and
  - (e) to be informed of the procedures to be followed pursuant to this Act and any other relevant enactment that is in force.
- (3) The police officer who has apprehended a child, or any other police officer shall not later than 24 hours after the apprehension, inform a probation officer of the apprehension.
- (4) The police officer responsible for the investigation of a case with respect to a child, apprehended in accordance with subsection (1), shall ensure that the child is assessed by a probation officer, before the commencement of the initial inquiry into the offence alleged to have been committed by the child.
- (5) Where
- (a) the police officer is unable to inform the probation officer of the apprehension as required under subsection (3); or
  - (b) the police officer responsible for the investigation of a case is unable to have the child assessed as required under subsection (4),

a written report shall be submitted to a magistrate at the initial inquiry stating the reasons for non-compliance.

- (6) Where a child, who is accused of an offence referred to in the *First Schedule* has not been released from police custody before appearing at an initial inquiry, the police officer who apprehended the child shall provide a magistrate with an oral report, pending a submission of a written report, stating the reasons why the child could not be released.

(7) A police officer shall not apprehend a child under the age of 12 years who is alleged to have committed an offence but

(a) shall inform a probation officer and the Director of Child Protection of the following particulars of the child:

(i) the name of the child;

(ii) the age of the child;

(iii) the offence alleged to have been committed by the child; and

(iv) the name, address and telephone number of the parent or appropriate adult; and

(b) may remove the child to a place of safety where the police officer has reason to believe that it is necessary to do so for the safety of the child and he may arrange for proceedings to be commenced under the *Child Protection Act, 2023* (Act 2023-).

#### **Assessment**

8.(1) Where a probation officer who receives a notification from a police officer that a child has been apprehended in accordance with section 6, the probation officer shall assess the child in a place of assessment within 96 hours prior to the child appearing at an initial inquiry relating to that child.

(2) A probation officer may select a place of assessment for the temporary reception of a child in conflict with the law, prior to or pending an initial inquiry regarding the child.

(3) Where a probation officer conducts an assessment of a child in conflict with the law, he shall collect the information required for the preparation of the assessment report set out in subsection (4).

(4) At the end of an assessment, a probation officer shall complete an assessment report which shall include

- (a) the following particulars in relation to the child
  - (i) the name of the child;
  - (ii) the age of the child;
  - (iii) the offence alleged to have been committed by the child;
  - (iv) the name, address and telephone number of the parent or appropriate adult;
  - (v) the name, address and telephone number of the attorney-at law representing the child;
  - (vi) whether the child
    - (A) has been released into the custody of a parent or appropriate adult;
    - (B) is being detained in a place of safety; or
    - (C) is being detained in a secure residential facility; and
- (b) any information concerning the child which will assist the magistrate at the initial inquiry in determining
  - (i) the prospects of diversion;
  - (ii) the possible release of the child into the care of a parent of the child or an appropriate adult, if the child is in detention;
  - (iii) the placement, where applicable, of the child in a particular secure residential facility or in a place of safety,

giving due consideration to the age, physical and mental status of the child and the degree of the alleged offence.

(5) Where it appears to the probation officer that the child does not intend to acknowledge responsibility for the alleged offence, this information shall be included in the assessment report.

(6) The probation officer shall submit the assessment report to the magistrate conducting the initial inquiry prior to the commencement of the initial inquiry.

**Persons to attend assessment**

9.(1) Subject to subsections (3) and (6) of section 10, the parent of the child or an appropriate adult shall attend the assessment of the child.

(2) A child shall be present at his assessment.

(3) The following persons may attend the assessment of a child:

(a) a prosecutor;

(b) the attorney-at-law representing the child; or

(c) a police officer.

**Powers and duties of probation officer prior to assessment**

10.(1) A probation officer may at any time before the assessment of a child issue a notice in the prescribed form to the parent of the child or to an appropriate adult to appear at the assessment.

(2) A notice issued pursuant to subsection (1) shall be delivered by a police officer on the request of the probation officer in the prescribed manner.

(3) A person notified pursuant to subsection (1) may apply to the probation officer for permission to be absent or excluded from the assessment, and where the probation officer grants such permission, the permission shall be in writing.

(4) A probation officer may request a police officer to

(a) obtain any documentation required for the completion of the assessment of a child;

(b) locate the parent of a child or an appropriate adult; and



- (c) provide transport, in order to secure the attendance of the child and his parent or an appropriate adult, for the assessment.
- (5) A probation officer shall make every effort to locate a parent of the child or an appropriate adult for the purposes of concluding the assessment of the child.
- (6) Where all reasonable efforts to locate a parent of the child or an appropriate adult have failed, the probation officer shall conclude the assessment in the absence of such persons.

**Powers and duties of probation officer at assessment**

- 11.(1) A probation officer shall
- (a) explain the purpose of the assessment to
    - (i) the child; and
    - (ii) the parent of the child or an appropriate adult;
  - (b) inform the child of his right to
    - (i) be informed of the nature of the offence or offences alleged to have been committed;
    - (ii) seek the advice of an attorney-at-law;
    - (iii) have a parent or an appropriate adult present where he is to be questioned, interviewed or assessed in respect of an offence or offences alleged to have been committed;
    - (iv) remain silent; and
    - (v) be informed of the procedures to be followed pursuant to this Act and any other relevant enactment that is in force;
  - (c) explain the procedures to be followed under this Act to
    - (i) the child; and
    - (ii) the parent of the child or an appropriate adult; and

- (d)* inquire from the child whether he intends to acknowledge responsibility for the offence in question.
- (2) The probation 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 the assessment and where such information is obtained, the child shall be informed of the information.
- (3) Where a child is accused with another child, the probation officer may conduct the assessment of the children simultaneously.
- (4) The probation officer shall encourage participation of the child during the assessment process.

#### PART IV

#### SECURING ATTENDANCE OF A CHILD AT INITIAL INQUIRY

##### **Methods of securing attendance of a child at initial inquiry**

- 12.(1)** The methods which may be used by a police officer for securing the attendance of a child in conflict with the law, at an initial inquiry, are by
- (a)* apprehension;
  - (b)* a summons; or
  - (c)* a written notice.
- (2) Before a police officer uses any of the methods for securing the attendance of a child in conflict with the law referred to in subsection (1), the police officer shall consult with the prosecutor as to whether or not the matter should be set down for an initial inquiry.

**Summons**

13.(1) A summons issued in respect of a child shall specify the place, date and time of the initial inquiry.

(2) A copy of the summons relating to the alleged offence by the child shall be served on the parents of the child or on the appropriate adult.

(3) A police officer shall,

(a) not later than 24 hours after the service of the summons referred to in subsection (1) inform a probation officer of the service of the summons in the prescribed manner;

(b) as soon as is reasonably possible, but prior to the commencement of the initial inquiry, inform the child

(i) of the nature of the offence or offences alleged to have been committed;

(ii) of his right to

(A) seek the advice of an attorney-at-law;

(B) have a parent or an appropriate adult present where he is to be questioned, interviewed or assessed in respect of an offence or offences alleged to have been committed;

(C) remain silent; and

(D) be informed of the procedures to be followed pursuant to this Act and any other relevant enactment that is in force.

**Written Notice**

14.(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 pursuant to subsection (1), shall
- (a) direct the parent of the child or an appropriate adult to bring the child or cause the child to appear at the initial inquiry and to have the child remain in attendance at the initial inquiry relating to the offence in question; and
  - (b) complete and hand to the child and to the parent of the child or to an appropriate adult, a written notice on which shall be entered
    - (i) the offence in respect of which the initial inquiry will be conducted; and
    - (ii) the time and place at which the child shall appear.
- (3) The notice referred to subsection (2)(b) shall be written in a manner that can be understood by a child.
- (4) Pursuant to subsection (2)(b), the police officer shall
- (a) when he hands the written notice to a child, the parent of the child or an appropriate adult, inform them of
    - (i) the nature of the offence or offences alleged to have been committed;
    - (ii) the child's right to
      - (A) seek the advice of an attorney-at-law;
      - (B) have a parent or an appropriate adult present where he is to be questioned, interviewed or assessed in respect of an offence or offences alleged to have been committed;
      - (C) remain silent;
      - (D) be informed of the procedures to be followed pursuant to this Act and any other relevant enactment that is in force; and

- (b) not later than 24 hours after handing the written notice to the child, the parent of the child or the appropriate adult inform a probation officer that he has done so.

#### **Uncertainty as to age of person**

15. Where 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 age would render a person 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.

#### **Release of child into care of the parent or the appropriate adult before the initial inquiry**

16.(1) A police officer shall release a child who is in detention in police custody and who is accused of an offence referred to in the *First Schedule*, into the care of the parent of the child or an appropriate adult, before the child appears at the initial inquiry unless

- (a) exceptional circumstances 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.
- (2) A police officer may, in consultation with the prosecutor, release a child who
- (a) is accused of an offence referred to in the *First Schedule* but who has not been released pursuant to subsection (1); or
  - (b) is in detention in police custody and who is accused of an offence referred to in the *Second Schedule*,

into the care of a parent of the child or an appropriate adult on any one or more conditions referred to in subsection (3).

(3) A child may be released pursuant to subsection (2) on the condition that the child

- (a) appears at a specified place and time for assessment;
- (b) does not
  - (i) interfere with a witness;
  - (ii) tamper with evidence; or
  - (iii) associate with a person or group of people specified by the police officer in consultation with the prosecutor; and
- (c) resides at a particular address.

**Director of Public Prosecutions may authorise the release of a child**

17.(1) Notwithstanding the decision of a police officer under section 16(1), the Director of Public Prosecutions may, authorise the release of a child from detention in police custody into the care of the parent of the child or an appropriate adult on any of the conditions referred to in section 16(3).

(2) Where a release is authorised under subsection (1), the written notice referred to in section 14, shall be handed to the child and to the person into whose care the child is released.

**Duty of police officer and person into whose care a child is released**

18. A police officer who releases a child from detention in accordance with section 16 or who releases a child on the direction of the Director of Public

Prosecutions in accordance with section 17, 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
  - (i) offence in respect of which the child is being accused;
  - (ii) conditions relating to the release of the child; and
  - (iii) place, date and time at which the child shall appear for the initial inquiry;
- (b) direct a parent of the child or appropriate adult to bring the child or cause the child to appear at the initial inquiry at a specified place, date and time and to remain in attendance and, if any 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 conditions referred to in paragraph (a) have been imposed, to comply with those conditions.

**Release of child on recognizance prior to initial inquiry**

19.(1) Where a child is taken into police custody with or without a warrant, and cannot be brought before a magistrate immediately, the police officer in charge of a police station to which the child is brought shall inquire into the matter and shall in any case

- (a) unless the child is accused of an offence referred to in the *Third Schedule*; or
- (b) unless it is necessary in the interest of the child to remove him from association with any undesirable person,

release the child on recognizance, with or without sureties, for such an amount as will, in the opinion of the police officer, secure the attendance of the child at the initial inquiry.

(2) The recognizance provided pursuant to 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 may, after consultation with the Director of Public Prosecutions, issue directives regarding the conditions to be set for recognizance of bail.

(4) The Director of Public Prosecutions may, in consultation with the police officer charged with the investigation with respect to a child, authorise the release of a child accused of an offence referred to in the *Second Schedule* on recognizance prior to the appearance of the child at the initial inquiry, subject to reasonable conditions where the release of the child into the care of a parent of the child or an appropriate adult is deemed appropriate.

#### **Child accused of certain offences not to be released from detention**

20. Subject to section 21, a police officer shall not release a child accused of an offence referred to in the *Third Schedule* from detention.

#### **Detention in a secure residential facility**

21. Where a child cannot be released, pursuant to section 20,

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

the child shall be detained in a secure residential facility.

#### **Death, injury or illness of a child in police custody**

22.(1) Where a child in detention in police custody complains that he is ill or that he has sustained an injury during apprehension or whilst in detention, the police officer to whom such complaint is made shall report the complaint to the police officer in charge of the police station where the child was apprehended,



and the police officer in charge of the police station shall delegate a police officer to

- (a) take the child to a medical doctor for examination; and
- (b) notify the parent or appropriate adult of the child

as soon as possible but not later than within 24 hours of the complaint.

(2) The report of the medical doctor in respect of a child who is injured while in detention in police custody shall be included in the appropriate police docket in the police station where the child was apprehended and the report may be examined by a magistrate, an attorney-at-law representing the child or the Director of Public Prosecutions.

(3) Where a child in detention in police custody dies the police officer in charge of the police station shall immediately notify

- (a) the Coroner; and
- (b) the parent or appropriate adult of the child.

**Register of children waiting to attend an initial inquiry**

23.(1) The police officer in charge of a police station shall keep a register regarding the children who are to attend an initial inquiry.

(2) The register referred to in subsection (1) shall contain the following particulars:

- (a) the name of the child;
- (b) the age of the child;
- (c) the offence alleged to have been committed by the child;
- (d) the name, address and telephone number of the parent or the appropriate adult;
- (e) the name and number of the attorney-at-law representing the child;

- (f)* whether the child
  - (i) is being detained in a secure residential facility;
  - (ii) is being kept at a place of safety; or
  - (iii) has been released into the custody of a parent or an appropriate adult.
- (3) The register referred to in subsection (1) may be examined by a magistrate, an attorney-at-law representing the child or the prosecutor.

## PART V

### INITIAL INQUIRY AND DIVERSION

#### **Nature and objectives of an initial inquiry**

- 24.(1)** An initial inquiry shall be held in respect of a child after an assessment is completed pursuant to Part III.
- (2) The appearance of a child at an initial inquiry before a magistrate shall be the equivalent of a first appearance before a Court.
- (3) The objectives of an initial inquiry are to
  - (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 prosecutor 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 circumstances and the offence are considered in order to make a decision on diversion and placement of the child;
  - (e)* ensure that the views of all persons, required to be present pursuant to section 25(1), shall be considered before a decision is taken;

- (f)* encourage the participation of the child and his parent or an appropriate adult in decisions concerning the child; and
  - (g)* determine the release or placement of the child pending
    - (i)* the conclusion of the initial inquiry; or
    - (ii)* the appearance of the child in Court.
- (4) An initial inquiry shall be held in such place as a magistrate may determine having regard to privacy and confidentiality.
- (5) A magistrate shall conduct the proceedings in an informal manner by asking questions, interviewing persons at the initial inquiry and obtaining information.
- (6) A magistrate in conducting proceedings in an informal manner pursuant to subsection (5) may seek the assistance of a social worker when asking questions, interviewing persons at the initial inquiry and obtaining information.

**Persons to attend an initial inquiry**

- 25.(1) The following persons shall attend an initial inquiry
- (a)* the child;
  - (b)* the parent of the child or an appropriate adult;
  - (c)* the probation officer who conducted the assessment of the child;
  - (d)* the prosecutor;
  - (e)* any other person whose attendance may be considered necessary by the magistrate conducting the inquiry.
- (2) A magistrate may exclude the parent of the child or an appropriate adult from attending the initial inquiry where their presence at the initial inquiry is not in the best interest of the child.

- (3) Where an initial inquiry proceeds in the absence of the probation officer who conducted the assessment of the child, the assessment report shall be made available at the initial inquiry.
- (4) The following persons may attend an initial inquiry
- (a) the attorney-at-law representing the child;
  - (b) a police officer;
  - (c) any other person whose attendance may be considered necessary by the magistrate conducting the inquiry.

**Procedure relating to an initial inquiry**

- 26.(1)** At the commencement of an initial inquiry a magistrate shall
- (a) determine the age of the child;
  - (b) explain the purpose of the initial inquiry to the child;
  - (c) inform the child of the nature of the offence or offences alleged to have been committed;
  - (d) inform the child of his right
    - (i) to seek the advice of an attorney-at-law;
    - (ii) to have a parent or an appropriate adult present at the initial inquiry; and
    - (iii) to be informed of the procedures to be followed pursuant to this Act and any other relevant enactment that is in force; and
  - (e) explain to the child the immediate procedures to be followed pursuant to this Act.
- (2) A prosecutor shall ensure that the magistrate has a copy of the assessment report, if available.

- (3) A prosecutor or a probation officer attending an initial inquiry may submit to the magistrate information regarding a previous diversion or conviction of the child concerned.
- (4) A child, the attorney-at-law representing the child, the parent of the child, an appropriate adult and the prosecutor, shall each be given an opportunity to question the probation officer who prepared the assessment report on the child or any other person sharing information at the initial inquiry.
- (5) Where the child in respect of whom an initial inquiry is being conducted, is a co-accused with another child, a joint initial inquiry may be held.
- (6) Where a joint initial inquiry is held pursuant to subsection (5), different decisions may be made in respect of each child.
- (7) Where a child does not acknowledge responsibility for the offence with which he is being charged, no further questions regarding the offence may be put to the child and the prosecutor may set the matter down for trial in the Court.
- (8) Information furnished at an initial inquiry shall not be used in subsequent proceedings, against the person who furnished the information.
- (9) A magistrate shall keep a record of all proceedings relating to an initial inquiry.

**Powers and duties of a magistrate with respect to an initial inquiry**

27.(1) A magistrate shall conduct all initial inquiries and discuss all relevant considerations of a child's case with the probation officer who prepared the assessment report in respect of the child before making a decision pursuant to this Part.

- (2) A magistrate may
  - (a) summon or cause to be summoned any person whose presence is necessary for the conclusion of an 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 such steps as 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) Where a child has not been assessed at the commencement of the initial inquiry, the magistrate shall make arrangements with the Chief Probation Officer to have the assessment conducted in the manner set out in section 8.
- (4) The magistrate may dispense with the assessment if it is in the best interests of the child to do so.
- (5) A magistrate shall ensure that the child, the attorney-at-law representing the child and the parent of the child or an appropriate adult
- (a)* know of the recommendations in the report prepared by the probation officer; and
  - (b)* are informed of any diversion option and the aims and content of such option.
- (6) The probation officer who prepared the assessment report in respect of a child shall be present at the initial inquiry of that child and the magistrate may request him to explain, elaborate upon or justify any recommendation or statement made in the assessment report, and he may also be asked to provide additional information.

(7) A magistrate shall consider the reports regarding the apprehension of the child and the detention in police custody provided by the police officer who apprehended the child.

**Failure to appear at an initial inquiry**

28.(1) A parent or an appropriate adult, who has been directed to appear at an initial inquiry and who fails to do so, is guilty of an offence and is liable on summary conviction to a fine of \$5 000 or to imprisonment for 12 months or to both.

(2) Subsection (1) shall apply with the changes required by the context and subject to sections 56 and 57 to a child who has been released in the care of his parent or an appropriate adult and who fails to comply with the direction contained in the written notice referred to in section 14 or with any condition imposed pursuant to section 16(3).

**Release of child into care of parent or appropriate adult**

29.(1) A magistrate shall release a child who is in detention, into the care of the parent of the child or an appropriate adult where

- (a) the initial inquiry is not disposed of at the first appearance of the child before a magistrate; and
- (b) it is in the interest of justice to 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 of the child or an appropriate adult, a magistrate shall have regard to the recommendation made by the probation 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 of the child or the 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 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 Government or on the part of the child or his attorney-at-law;
  - (k) whether detention would prejudice the child in the preparation of his case;
  - (l) the likelihood that, where the child is found guilty of the offence he will be detained for a substantial period; and
  - (n) the receipt of a written confirmation by the Director of Public Prosecutions that he intends to charge the child with an offence referred to in the *Third Schedule*.
- (3) A magistrate may, in releasing a child pursuant to subsection (1), require the child
- (a) to appear before the magistrate at a specified place and time;
  - (b) to report periodically to a specified person or place;
  - (c) to attend a particular school;
  - (d) to reside at a particular address;
  - (e) to be placed under the supervision of a person specified by the magistrate; or



- (f)* not to interfere with a witness, tamper with any evidence or associate with any person or group of persons specified by the magistrate.
- (4) Where a magistrate releases a child into the care of a parent of the child or an appropriate adult, the magistrate shall direct the parent or the appropriate adult, as the case may be, to bring the child or ensure that the child appears at a specified time and place and, where a condition has been imposed pursuant to 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) is guilty of an offence and is liable on summary conviction to a fine of \$5 000 or to imprisonment for 12 months or to both.
- (6) Where a child has been released into the care of his parent or an appropriate adult and the child fails to comply with a condition imposed pursuant to subsection (3), the magistrate may direct that the child be detained in a secure residential facility.
- (7) A magistrate may, after consideration of the facts release a child on bail or recognizance having regard to the factors referred to in subsection (2) and subject to one or more of the conditions referred to in subsection (3).
- (8) A magistrate may refuse to release a child on bail where
  - (a)* the magistrate is satisfied that there are substantial grounds for believing that the child, if release on bail, whether subject to conditions or not, would
    - (i) fail to surrender to custody;
    - (ii) commit an offence; or
    - (iii) interfere with witnesses; or
  - (b)* the child is charged with an offence alleged to have been committed while he was released on bail.

**Detention of child after first appearance before a magistrate**

**30.(1)** A magistrate may direct the detention of a child in a secure residential facility where

- (a) the proceedings of the initial inquiry are postponed pursuant to section 31 or 32;
- (b) the release of the child into the care of his parent or an appropriate adult is for any reason not possible; or
- (c) the child is to appear for trial pursuant to section 41.

(2) A magistrate shall have regard to the recommendations made by the probation officer when deciding where to place the child pursuant to subsection (1).

(3) A child of 14 years or older who is charged with an offence referred to in the *Third Schedule* shall be detained in a prison where a magistrate feels there is a substantial risk that the child may cause harm to other children in a secure residential facility.

(4) Where a magistrate issues a direction that a child be detained in prison, the magistrate shall record the reasons for issuing such a direction.

(5) Where a magistrate issues a direction for the detention of a child pursuant to subsection (1)(c), the child shall appear before the Court at a time and place to be determined by the Court.

(6) Where a child appears before a Court pursuant to subsection (5), a magistrate shall

- (a) determine whether or not the detention remains necessary;
- (b) where ordering further detention of the child, record the reasons for his decision;
- (c) consider a reduction of the amount of bail or recognizance, where applicable;

- (d) inquire whether or not the child is being properly treated and kept under suitable conditions; and
- (e) where he is satisfied that the child is not being properly treated and kept under suitable conditions, inspect and investigate the treatment and conditions and make appropriate remedial recommendations to the Minister.

### **Postponement of an initial inquiry**

**31.(1)** A magistrate may postpone the proceedings of an initial inquiry for a period not exceeding 14 days for the purposes of

- (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) planning 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 is required;
- (g) noting a confession;
- (h) noting an admission;
- (i) holding an identity parade;
- (j) securing an attorney-at-law to represent the child; or
- (k) any other matter which a magistrate deems necessary.

(2) Where the proceedings of an initial inquiry are postponed pursuant to paragraphs (g), (h) or (i) of subsection (1), a magistrate shall inform the child of his right to have his parent or an appropriate adult present during the proceedings.

(3) Where the initial inquiry is not concluded within 14 days and subject to section 32, the inquiry shall be closed and the prosecutor shall set the matter down for trial in the Court.

#### **Postponement of initial inquiry for a more detailed assessment**

32.(1) A magistrate may postpone the proceedings of an initial inquiry for a period not exceeding 14 days where there are exceptional circumstances warranting a further assessment of the child, and where these circumstances relate to

- (a) the possibility that the child may be a danger to others or to himself;
- (b) the fact that the child has a history of repeatedly committing offences or absconding;
- (c) the social welfare history of the child;
- (d) the possible admission of the child to counselling, a substance abuse programme, a therapeutic treatment programme or other intensive programme; or
- (e) the possibility that the child may be a victim of sexual or other abuse.

(2) A magistrate may order that a psychiatrist be appointed to conduct the assessment referred to in subsection (1) and that 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 secure residential facility or a place of assessment.

#### **Decision regarding diversion**

33.(1) A magistrate shall ascertain whether a matter before him may be diverted after consideration of the following:

- (a) any recommendations made by the prosecutor;
- (b) the assessment report;

- (c) the views of all persons required to be present, pursuant to section 25(1), at the initial inquiry and any information provided by those persons;
  - (d) any information requested pursuant to section 27(2)(c); and
  - (e) the willingness of the child to acknowledge responsibility for the offence.
- (2) Where a magistrate decides that the matter may be diverted, the magistrate shall issue a direction for diversion in the prescribed manner in respect of the child concerned.
- (3) In addition to the diversion options stated in section 36, a magistrate 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 section 36.

#### **Purposes of diversion**

- 34.** The purpose of diversion is to
- (a) encourage the child to be accountable for the harm which he has caused;
  - (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 how the harm has impacted 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 stigmatising the child and the adverse consequences flowing from being subject to the criminal justice system; and
- (h) prevent the child from having a criminal record.

#### **Child to be considered for diversion under certain circumstances**

**35.** A child shall be considered for diversion where

- (a) the child and his parent or an appropriate adult, consent to the diversion and the diversion option;
- (b) the child understands his 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.

#### **Levels of diversion options**

**36.(1)** At the initial inquiry, a magistrate, in directing a diversion option in respect of a child, may direct a level one, level two or level three diversion option and in selecting the level that is appropriate for the child, a magistrate shall consider the

- (a) age and developmental needs of the child;
  - (b) background of the child;
  - (c) educational level, cognitive ability and the environmental circumstances of the child;
  - (d) proportionality of the option recommended or selected to the circumstances of the child; and
  - (e) nature of the offence and the interests of the community or society.
- (2)** A level one diversion option referred to in subsection (1) 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 3 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 3 months;
  - (f) the issue of a positive peer association order in the prescribed manner in respect of a specified person in a specified place for a period not exceeding 3 months;
  - (g) the issue of a family time order in the prescribed form for a period not exceeding 3 months;
  - (h) the issue of a good behaviour order in the prescribed form;
  - (i) the issue of an order prohibiting the child from visiting, frequenting or appearing at a specified place in the prescribed form;
  - (j) referral to counselling or therapy for a period not exceeding 3 months;
  - (k) compulsory attendance at a specified place for a specified vocational or educational purpose for a period not exceeding 5 hours each week, for a maximum of 3 months;
  - (l) symbolic compensation to a specified person or an institution; and
  - (m) restitution of a specified object to a specified victim of an alleged offence where the object concerned may be returned or restored.
- (3) A level two diversion option referred to in subsection (1) includes
- (a) the options referred to in subsection (2), except that the maximum periods referred to in that subsection, shall for the purposes of this subsection, be 6 months;

- (b) compulsory attendance at a specified institution for a vocational or an educational purpose for a period not exceeding 8 hours each week, for a maximum of 6 months;
  - (c) the performance of some service without remuneration for the benefit of the community under the supervision or control of an organisation, institution, or a specified person or group identified by a probation officer effecting the assessment, for a maximum period of 50 hours, and to be completed within a maximum period of 6 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; and
  - (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.
- (4) A level three diversion option referred to in subsection (1) includes
- (a) a referral to a programme which does not exceed 6 months and which has a residential requirement that must not exceed 35 days in total and 21 consecutive days during the operation of the programme;
  - (b) the performance of some service without remuneration for the benefit of the community under the supervision and control of an organisation, institution, or a specified group of persons, identified by a probation officer and for a period not exceeding 160 hours which shall be completed within 12 months and no more than 35 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 6 months and no more than 35 hours per week; and
  - (d) referral to counselling or therapeutic intervention in conjunction with any of the options listed in this subsection.



(5) A level three diversion option shall apply to a child who is the age of 14 years or older where the relevant enactment under which the offence is committed imposes a sentence of detention.

(6) On the selection of a diversion option, the Court shall designate a probation officer or other suitable person to monitor the compliance of the child with the selected diversion option and where the child fails to comply with any condition of the diversion option, the probation officer or other suitable person shall notify the Court of the failure.

**Minimum standards applicable to diversion and diversion options**

37.(1) A child may be required to perform community services as an element of diversion, with due consideration being given to the age and development of the child.

(2) A diversion option shall

- (a) promote the dignity and well-being of the child, and the development of his sense of self worth and ability to contribute to his 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 Chief Probation Officer shall keep a register of all of the children who have been subjected to diversion.

**Failure to comply with diversion direction**

38.(1) Where a child fails to comply with a diversion option, a magistrate shall, on being notified of such failure in the prescribed manner, issue

- (a) a warrant for the apprehension of the child; or
- (b) a written notice to the child to appear before a magistrate.

(2) Where a child appears before the magistrate pursuant to subsection (1), a magistrate shall inquire into the reasons for the failure of the child to comply with the diversion direction and unless the prosecutor decides to proceed with the prosecution of the child concerned, a magistrate may, after consideration of the views of any person present at the initial inquiry

- (a) apply the same diversion option with altered conditions;
- (b) apply any other diversion option; or
- (c) issue an appropriate direction that will assist the child and his family to comply with the diversion option initially applied.

(3) Where the prosecutor decides to proceed with the prosecution of the matter, the matter shall be set down for trial in the Court and section 43 shall apply with the necessary changes required by the context.

#### **Development of diversion options**

39. The Minister may make regulations to develop other suitable diversion options.

#### **Protection proceedings**

40.(1) Where it appears during proceedings at an initial inquiry that a child is in need of care and protection as described in section 5(1) of the *Child Protection Act, 2023* (Act 2023-), and that it is desirable to deal with the child under the provisions of that Act, a magistrate shall stop the initial inquiry and deal with the matter as if it were commenced under the *Child Protection Act, 2023*.

(2) Notwithstanding the generality of subsection (1), a magistrate shall stop the initial inquiry and deal with the matter as if it were commenced under the *Child Protection Act, 2023* where 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 such offences;

- (b) is allegedly abusing dependence producing substances; or
- (c) does not live at his 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.

#### **Referral of matter for trial and detention pending trial**

**41.(1)** Where a child has been charged with an offence listed in the *Third Schedule* the child shall appear in the Criminal Division of the High Court in accordance with the *Supreme Court of Judicature Act, Cap. 117A*.

(2) In relation to offences that are triable summarily or on indictment as listed in the *Second Schedule*, the magistrate shall determine that the offence be tried summarily.

(3) Any information obtained

- (a) by a probation officer during the assessment of a child; or
- (b) during the initial inquiry in respect of a child,

shall not be admissible in any court proceedings against the child pursuant to this Act.

(4) The magistrate may conduct proceedings to determine whether a child should be detained in a secure residential facility pending trial for offences listed in the *First Schedule* or the *Second Schedule*, where diversion has not taken place and the matter has not been handled in the manner specified by section 40.

(5) A child referred to in subsection (1) shall be detained in a secure residential facility pending trial.

PART VI

COURT PROCEEDINGS

**Conduct of proceedings relating to child in Court**

- 42.(1) At the commencement of the proceedings, the Court shall
- (a) inform the child of the nature of the allegations against him;
  - (b) inform the child of his right to
    - (i) legal representation by an attorney-at-law;
    - (ii) the presence of his parent or appropriate adult at the proceedings;
    - (iii) remain silent; and
  - (c) explain to the child the procedures to be followed pursuant to this Act or any other relevant enactment

**in a manner that can be understood by a child.**

(2) The proceedings in the Court shall be conducted in an informal manner in order to encourage maximum participation by the child and his parents or an appropriate adult.

(3) Where a child refuses to have his parent or an appropriate adult present at the proceedings referred to in subsections (1) and (2), or where a parent of a child or an appropriate adult is not present or cannot be traced and an attorney-at-law is not available, the police officer in charge of the investigation relating to the child, shall request a person to act as an independent observer and such independent observer shall be present at the proceedings.

(4) For the purposes of this section an “independent observer” means a social worker, a child protection officer or such other person as may be authorized by the Court.

**Treatment of a child in Court**

- 43.(1) A child shall not be subjected to the wearing of leg irons when appearing in the Court, and handcuffs may only be used where there are exceptional circumstances that warrant their use.
- (2) A child held at a police station or a Court shall be kept separate from adults 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.
- (4) Where a child is transported to and from the Court he shall be transported separate from adults.
- (5) The Commissioner of Police shall issue directives concerning the treatment and conditions of a child while being held in detention at Court.

**Criminal responsibility**

- 44.(1) The criminal responsibility of a child shall be proved by the prosecution beyond reasonable doubt.
- (2) The prosecutor or the attorney-at-law representing the child may request the Court to order an evaluation of the child by a suitably qualified person.
- (3) The evaluation referred to in subsection (2) shall be conducted at the expense of the Government.
- (4) Where an order has been made by the Court pursuant to subsection (2), the person identified to conduct an evaluation of the child shall furnish the Court with a written report of the evaluation within 30 days of the date of the order.
- (5) The evaluation shall include an assessment of the cognitive, emotional, physical, psychological and social development of the child.
- (6) The person who conducts the evaluation may be called to attend the Court proceedings and to give evidence and, if called, shall receive remuneration from the Government.

**Separation and joinder of trials involving child and adult**

45.(1) Where 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 joinder of trials under subsection (1) shall be made to the Court and the child shall appear after notice is given to him in the prescribed manner.

(3) Where the Court grants an application for a joinder of trials, the matter shall be transferred to the relevant Court, and that Court shall afford the child concerned all such benefits conferred on a child under this Act.

**Time limits relating to conclusion of trials**

46.(1) The Court shall conclude the trial of an accused child within a period not exceeding 6 months and shall ensure that adjournments of the trial are limited in number and duration.

(2) Sections 29 and 32, shall apply, with the necessary changes required by the context, to the Court where the child is appearing in the Court for the first time is in detention.

(3) Where a child remains in detention and the trial of the child is not concluded within 6 months from the date on which the child has pleaded to the charge, the child shall be released from detention, unless he is charged with an offence listed in the *Third Schedule*.

**Court may divert matter**

47.(1) Where 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 where the prosecutor indicates that the matter may be diverted.

- (2) Sections 33 to 38 shall apply with the changes required by the context where the Court makes an order for diversion.
- (3) Where the Court makes an order for diversion, it shall postpone the proceedings pending the compliance of the child with the diversion order.
- (4) The Court shall, acquit the child of all charges in question, on receipt of a report from a probation officer or suitable person referred to in section 36(6) that a child has successfully complied with a diversion order.
- (5) An acquittal of the child may be made in the absence of the child.
- (6) Where a child fails to comply with a diversion order, section 38 shall apply with the necessary changes required by the context.

**Privacy and confidentiality**

48. A person shall not be present at a sitting of the Court in a matter relating to a child unless

- (a) the presence of the person is necessary in connection with the proceedings of the Court; or
- (b) the Court has granted the person permission to be present.

**Prohibition of the publication of certain matters**

49.(1) 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 18 years appearing at any proceedings before the Court.

- (2) Subject to subsection (3), a probation officer, pursuant to this section, shall not preclude
  - (a) access to information pertaining to a child where such access would be in the interest, safety or welfare of the child;

- (b) the publication, in the form of a report, of

    - (i) information for the purpose of reporting any question of law relating to the proceedings in question; or
    - (ii) any decision or ruling given by the Court on such a 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 where such publication would be in the interest, safety or welfare of the child or children in general.
- (3) The reports referred to in subsection (2)(b) and (c) shall not mention
- (a) the name of the person charged;
  - (b) the person against whom or in connection with whom the offence in question is alleged to have been committed;
  - (c) any witness at such proceeding; or
  - (d) the place where the offence in question was alleged to have been committed.
- (4) Subject to subsection (5), in relation to any proceedings in any Court
- (a) no newspaper report, radio broadcast, television broadcast or post on a social media site in relation to proceedings under this Act shall reveal the name, address or school, or include any particulars calculated to lead to the identification of any child in respect of whom the proceedings are taken, or as being a witness in the proceedings; and
  - (b) no picture shall be published of any child so concerned in the proceedings.
- (5) The Court may, in any case, where satisfied that it is in the interest of justice or the public to do so, by order dispense with the requirements of this section to such extent as may be specified in the order.



- (6) A person who publishes in a newspaper, broadcasts by radio or television, posts on a social media site or shares via a messenger application any matter in contravention of this section, is guilty of an offence and is liable on summary conviction to a fine of \$5 000 or to imprisonment for a term of 2 years or to both.

## PART VII

### SENTENCING OF A CHILD

#### **Child to be sentenced in accordance with this Part**

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

- (2) Where the provisions of this Act regarding sentencing options, conflict with those provided for pursuant to any other relevant enactment, the sentencing options under this Act shall prevail.

#### **Pre-sentence reports**

**51.(1)** Prior to the imposition of sentence on a child, the Court shall

- (a) request a pre-sentence report prepared by a probation officer; and
- (b) hold a pre-sentence conference with the probation officer, where all considerations relevant to the child's case and possible sentencing options are discussed.

(2) Pursuant to subsection (1), the probation officer shall complete the report, as soon as possible, but no later than 8 weeks following the date upon which such report was requested.

(3) The Court may dispense with a pre-sentence report where

- (a) a child is convicted of an offence referred to in the *First Schedule*; or
- (b) requiring such a 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 received and considered by the Court.

(4) Where a 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 received and considered by the Court prior to the imposition of the sentence.

(5) For the purposes of subsection (3), “a sentence with a residential requirement” includes a sentence where the residential requirement is suspended.

### **Purposes of sentencing**

**52.** The purposes of sentencing pursuant to 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 which 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.

### **Community based sentences**

**53.(1)** The Court may, as a requirement in relation to a penalty for an offence, sentence a child to imprisonment for an initial period and thereafter require the child to serve the remainder of the period of the sentence providing a service in the community.

(2) A sentence which allows a child to remain in the community and which may be imposed pursuant to this Act includes

- (a) any of the options referred to in section 36(3);
- (b) placement under a supervision and guidance order in the prescribed form for a period not exceeding 3 years;
- (c) in cases that warrant such specialised intervention, referral to counselling or therapy in conjunction with any of the options listed in this section for a period of time as the Court considers fit;
- (d) where 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, for no more than 35 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 160 hours and which shall be completed in 12 months; and
- (f) any other sentence, subject to section 59, which is appropriate to the circumstances of the child and is in keeping with the principles of this Act and which, where it includes a period of time, shall not exceed 12 months.

(3) Before a child from the age of 12 years to 14 years is sentenced pursuant to subsection (2)(e), due consideration must be given to the age, development and compulsory school attendance of the child.

#### **Restorative justice sentences**

**54.(1)** Where 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 55 shall apply where 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 shall

- (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) Where 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) Where a child who has been sentenced in accordance with an order arising from a family group conference fails to comply with that order, the probation 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 where the child appears before the Court pursuant to such warrant, the Court shall impose an appropriate sentence on the child.

#### **Family group conference**

**55.(1)** Where a child has been referred to appear at a family group conference pursuant to section 54, a probation officer shall be appointed by a Court to conduct the family group conference and he shall within 14 days, but not later than 21 days after such 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.

(2) The following persons shall attend a family group conference

- (a) the child and the parent of the child or an appropriate adult;
- (b) any person reasonably requested by the child;

- (c)* the probation officer;
  - (d)* a police officer;
  - (e)* the victim of the alleged offence which the child committed and where the victim is under the age of 18 years, the parent of the victim or an appropriate adult;
  - (f)* the attorney-at-law representing the child where applicable;
  - (g)* a member of the community in which the child resides recommended by the probation officer; and
  - (h)* any person authorised by the probation officer to attend the family group conference.
- (3) 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 pursuant to subsection (4) as they deem fit.
- (4) A plan referred to in subsection (3)
- (a)* may include
    - (i)* the application of any option contained in section 36(2) or (3); or
    - (ii)* any other plan that is appropriate for the child, his family and the circumstance except that such a 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 of the child or an appropriate adult;
    - (iii)* specify the persons or organisations to provide the services referred to in subparagraph (ii);

- (iv) state the responsibility of the child and the parents of the child or an appropriate adult; and
  - (v) include such other matters relating to the education, recreation and welfare of the child as are relevant.
- (5) The probation 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 Court.
- (6) Where a child fails to comply with any condition of the plan agreed to in a family group conference, the probation officer shall notify the Court in writing of such failure, and the Court may impose a sentence under section 56 or 58.
- (7) Where the participants of a family group conference fail to agree on a plan, the probation officer shall close the family group conference and refer the matter back to the Court for consideration of another diversion option.
- (8) The proceedings of a family group conference shall be confidential and no statement made by a participant in the family group conference may be used as evidence in any subsequent court proceedings.

**Sentences involving correctional supervision**

- 56.(1)** The Court may impose a sentence of correctional supervision for a period not exceeding 3 years on a child over the age of 12 years.
- (2) The whole or any part of the sentence imposed pursuant to subsection (1) may be postponed or suspended, with or without conditions referred to in paragraphs (a), (b), (c), (d), (e), (f), (h) and (i) of section 60(3).

**Sentence with a compulsory residential requirement**

57.(1) A sentence involving a compulsory residential requirement shall not be imposed on a child unless the Court is satisfied that such a 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) A Court imposing any sentence involving a compulsory residential requirement on a child, 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 secure residential facility, subject to section 58; or
- (b) a prison, subject to section 59.

**Referral to secure residential facility**

58.(1) A sentence which involves residing in a secure residential facility shall not exceed 3 years.

(2) A child shall not be required to reside in a secure residential facility beyond the age of 18 years.

(3) A person detained at a secure residential facility shall not be automatically transferred from a secure residential facility to a prison upon attaining the age of 18 years.

### **Referral to prison**

**59.(1)** A sentence of imprisonment shall be used as a sentence of last resort and the sentence shall not be imposed unless

- (a) the child is the age of 14 years or older at the time of the commission of the offence;
- (b) substantial and compelling reasons exist for imposing a sentence of imprisonment, which may include
  - (i) conviction of an offence referred to in the *Second Schedule* or the *Third Schedule*; or
  - (ii) a previous failure to respond to alternative sentences, including sentences with a residential requirement; and
- (c) the Court is of the opinion that none of the other methods in which the case may legally be dealt with is suitable,

and the Court may sentence the child to be detained for such period, not exceeding the maximum term of imprisonment with which the offence is punishable in the case of a person aged 18 years or over, as may be specified in the sentence.

(2) A sentence of imprisonment shall not be imposed on a child in respect of an offence referred to in the *First Schedule*.

(3) Where 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 secure residential facility prior to the sentence being announced in the Court.

(4) A child sentenced to imprisonment shall not be accommodated with adult prisoners.

(5) Corporal punishment, severe or frightening measures shall not be inflicted on a child detained in a prison pursuant to this section.



**Postponement or suspension of passing sentence**

60.(1) The passing of any sentence may be postponed, with or without one or more of the conditions referred to in subsection (3), for a period of 3 months.

(2) The whole or any part of any sentence may be suspended, with or without one or more conditions referred to in subsection (3), for a period not exceeding 12 months.

(3) The conditions referred to in subsections (1) and (2) may be any condition appropriate to the circumstances of the child which is in keeping with the principles of this Act and which promotes the reintegration of the child into his 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;
- (f) attendance at a specified time and place of a family group conference;
- (g) placement under the supervision of a probation 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 any diversion option referred to in paragraphs (d), (e), (f), (g), (h), (i), (j) or (k) of section 36(2).

(4) Where the Court has postponed the passing of a sentence pursuant to subsection (1) on one or more conditions, the Court may request the probation officer concerned to submit regular reports indicating the compliance of the child with the conditions referred to in this section.

(5) The conviction of a child in respect of whom passing of a sentence has been postponed shall be expunged from any record where the child has met all the conditions imposed or at the expiration of the period in question, as the case may be.

**Penalty in lieu of fine or imprisonment**

**61.** Where the Court convicts a child of an offence for which a fine or imprisonment is stated by an enactment as the penalty, the Court 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 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, where 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.

**Prohibition on certain forms of punishment**

**62.(1)** The sentence of death shall not be pronounced on a child, recorded against a child or imposed on a child.

- (2) A sentence of life imprisonment shall not be imposed on a child.
- (3) A sentence of flogging or whipping shall not be imposed on a child.

**Notice to parent of child**

63.(1) Where it appears to a 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 of the child 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 a person for any
  - (i) loss caused to the person's property, whether the loss was an element of the offence charged 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 prosecutor, may decide to call on the parent or an appropriate adult to show cause, as directed by the Court, why the parent of the child or an appropriate adult should not pay the compensation.

(2) The Court may call on the parent of the child or an appropriate adult who is present in Court to show cause during the proceedings.

(3) The Court in all cases, instead of acting under subsection (2), may cause the Registrar of the Court to give written notice to the parent of the child or an appropriate adult to show cause why the parent of the child or an appropriate adult should not pay the compensation.

(4) Where the Court calls on the parent of a child or an appropriate adult under subsection (2) or the Registrar of the Court issues a notice under subsection (3),

- (a) the Court shall put 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 to the parent of the child or an appropriate adult within a reasonable time before the proceedings to show cause.

#### **Proceedings to show cause**

- 64.(1)** At the proceedings to show cause referred to in section 63,
- (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 of a child or appropriate adult may require a witness whose evidence is admitted under paragraph (a) to be recalled to give evidence; and
  - (d) the parent of a child 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 pursuant to section 62.
- (3) Where the parent is called on to show cause on the prosecution's application, the prosecution shall be a party to the proceedings to show cause.
- (4) Where the parent is called on to show cause on the Court's own initiative, the prosecutor may at the proceedings
- (a) appear and give the Court the assistance it may require; or
  - (b) intervene as a party with the permission of the Court.
- (5) Where 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 63(1)(b)(i), the Court may make an order requiring the parent to pay compensation.

- (6) An order made pursuant to subsection (5) shall direct that
- (a) the amount shall be paid by a time specified in the order or by instalments specified in the order; and
  - (b) the amounts shall be paid to the Registrar 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 that any order would have on the capacity of the parent to provide for his child.
- (8) The Court shall proceed under this section in the absence of the parent where the Court is satisfied that the parent has been given notice of the proceedings to show cause under section 63.

## PART VIII

### LEGAL REPRESENTATION

#### **Child to be provided with legal representation**

65. A child shall be provided with legal representation by the Government at all of the stages of any administrative or criminal proceedings under this Act.

#### **Requirements to be complied with by attorney-at-law**

66. An attorney-at-law representing a child shall
- (a) conduct the best defence for the child at all of the stages of any administrative or criminal proceedings under this Act taking into account the best interests of the child;

- (b) allow the child, as far as is reasonably possible, to give independent instructions concerning the case;
- (c) inform the child of his right to
  - (i) be informed of the nature of the offence or offences alleged to have been committed;
  - (ii) seek the advice of an attorney-at-law;
  - (iii) have a parent or an appropriate adult present where he is to be questioned, interviewed or assessed in respect of an offence or offences alleged to have been committed;
  - (iv) remain silent;
  - (v) be informed of the procedures to be followed pursuant to this Act and any other relevant enactment that is in force;
- (d) promote diversion where appropriate, but may not influence the child to acknowledge responsibility; and
- (e) make reasonable efforts to ensure that the trial is conducted without delay.

## PART IX

### GENERAL PROVISIONS AS TO PROCEEDINGS IN COURT

#### **Extension of power to take depositions**

67.(1) Subject to subsection (2), where the Court is satisfied by the evidence of a medical practitioner that the attendance before the Court of any child in respect of whom the offence is alleged to have been committed would involve serious danger to his 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 Judge or magistrate before whom it was taken.

- (2) The deposition taken pursuant to subsection (1) shall not be admissible in evidence against the accused child unless it is proved that
- (a) reasonable notice of the intention to take the deposition has been given to him; or
  - (b) it was taken in the presence of the accused child; and
  - (c) his attorney-at-law had the opportunity to question the child making the deposition.

## PART X

### SECURE RESIDENTIAL FACILITY

#### **Secure residential facility**

- 68.** For the purposes of this Part, a “secure residential facility” means
- (a) a residential facility designated under this Act for the purposes of the
    - (i) assessment under section 8;
    - (ii) detention of a child prior to or after an initial inquiry is conducted under this Act;
    - (iii) detention of a child pending trial pursuant to section 40;
    - (iv) reception and rehabilitation of a child who has been sentenced to a term of imprisonment under this Act; and
  - (b) residential protection and treatment centre for the purposes of reception and rehabilitation of a child who requires psychiatric or psychological treatment or treatment for substance abuse pursuant to section 40 and section 70.

**Designation of a secure residential facility**

69. The Minister may by order designate and cause any lands or buildings that he may think fit to be used as a secure residential facility, and any lands or buildings authorised to be so used shall be subject to this Act.

**Designation of the Government Industrial School as a secure residential facility**

70.(1) The Government Industrial School is designated as a secure residential facility for the purposes of this Act.

(2) In this section, the Government Industrial School refers to the school situate at Dodds Plantation in the parish of Saint Philip.

**Detention of a child**

71. A child shall not be detained in custody in a secure residential facility unless that child

- (a) is being detained before the making of an order or the imposition of a sentence by a judge or magistrate;
- (b) has been committed to custody or imprisonment by a sentence or an order of a judge or magistrate.

**Child Justice Board**

72.(1) The Minister shall appoint a Board to be known as the "Child Justice Board".

(2) The constitution of the Child Justice Board and matters related thereto are those set out in the *Fourth Schedule*.

(3) The members of the Child Justice Board shall be paid such remuneration as the Minister determines.



**Functions of the Child Justice Board**

73.(1) The Child Justice Board shall be responsible for the formulation of the policy of the secure residential facilities and shall give directions to the Director of a secure residential facility on the following:

- (a) the management and supervision of the secure residential facility;
- (b) the welfare of the children, including their education, training, recreation, conduct and safety;
- (c) the welfare and conduct of the staff at a secure residential facility; and
- (d) the proper maintenance of the secure residential facility.

(2) The Child Justice Board shall immediately notify the Minister of any abuses taking place at a secure residential facility of which the Board has knowledge.

**Appointment of a Director**

74.(1) The Minister shall appoint a Director of a secure residential facility designated as such under this Act.

(2) The Principal of the Government Industrial School shall for the purposes of this Act be considered to be a Director.

(3) The Director shall be the chief administrator and shall be responsible for the operation, maintenance, management and inspection of that secure residential facility.

**Staff**

75.(1) The Director shall be provided with such staff appointed in accordance with subsection (2), as is required for the purpose of carrying out the functions of a secure residential facility.

(2) The staff required for the purposes of subsection (1) shall be appointed in accordance with the *Public Service Act*, Cap. 29.

**Status of certain officers of a secure residential facility**

- 76.(1) An officer of a secure residential facility, who is in charge of
- (a) any child who is sent to that facility under this Act for the purpose of conveying him to or from the facility; or
  - (b) bringing a child back to the facility in case of his escape or refusal to return,

shall, for such purpose and while engaged in the duties set out in paragraph (a) and (b), have all such powers, authorities, protection and privileges of a constable under the *Police Act*, Cap. 167.

- (2) For the purposes of subsection (1), an “officer” is a person appointed or employed in the manner set out in section 75(2).

**Maintenance of records**

77.(1) The Director shall keep in a secure place all records pertaining to a child who is or has been detained in custody in the secure residential facility.

(2) The Director and staff shall keep the records of a child who is or has been detained in custody in the secure residential facility confidential and shall not disclose those records unless required by an enactment or by an order of the court.

(3) A person who contravenes subsections (1) or (2) is guilty of an offence and is liable to a fine of \$5 000 or to imprisonment for 12 months or to both.

**Establishment of secure residential facility programmes**

78. A Director shall establish and operate the following programmes:
- (a) a curriculum appropriate to the needs of each child in accordance with the provisions of the *Education Act*, Cap. 41;
  - (b) voluntary recreational programmes that are appropriate for children;

- (c) voluntary social and entertainment programmes that are appropriate for children;
- (d) voluntary religious services;
- (e) counselling programmes;
- (f) medical and dental treatment programmes;
- (g) visiting programmes; and
- (h) compulsory or voluntary work programmes.

### **Medical or Psychiatric Treatment**

79.(1) Where a child is moved from a secure residential facility to a

- (a) hospital facility;
- (b) psychiatric facility; or
- (c) residential protection and treatment centre

for examination or treatment, the child is not discharged from custody and, during the time the child is hospitalized or treated, the child shall be deemed to be in the custody of the Director of the secure residential facility in which the child was detained before hospitalization or treatment.

(2) The time spent by a child in a hospital, a psychiatric facility or residential protection and treatment centre is considered to be the same as if the child had spent that time in the secure residential facility in which the child was detained before hospitalization or treatment.

(3) Where the date for the discharge of a child from a secure residential facility arises while the child is hospitalized or being treated, the child shall be discharged from custody of the secure residential facility on that date, and the Director of the secure residential facility in which the child was detained before hospitalization or treatment shall take the necessary steps to remove the child from custody of the a secure residential facility at that time.

(4) Notwithstanding subsection (3), no child who is hospitalized in a psychiatric facility shall be discharged from that psychiatric facility except in accordance with the provisions of the *Mental Health Act*, Cap. 45.

(5) The Director shall notify the

- (a) parent of a child or an appropriate adult; and
- (b) Director of Child Protection

where a child is moved from a secure residential facility to a hospital, a psychiatric facility or residential protection and treatment centre for examination or treatment.

(6) The Director may consent to medical treatment for a child who is detained in custody in a secure residential facility where the

- (a) person is under the age of 16 years and requires medical treatment;
- (b) consent of a parent of a child or an appropriate adult is required by an enactment and is refused or otherwise not obtainable.

#### **Transfer of a child to another secure residential facility**

**80.** The Director may apply to the Court for an order to transfer a child from one secure residential facility to another.

#### **Emergency**

**81.(1)** The Director may declare a situation to be an emergency where there is the occurrence of fire, riot or disturbance, contagious disease or a natural disaster.

(2) Where an emergency is declared by the Director under subsection (1), the Director may

- (a) call off-duty staff to work;
- (b) require on-duty staff to remain on-duty;

- (c) give and enforce orders respecting the security and control of the secure residential facility to all persons who are on the premises during an emergency;
- (d) confine children to their rooms or to such other places as the Director considers appropriate and necessary; and
- (e) take such other steps and make such other orders as the Director considers appropriate and necessary in order to ensure that the secure residential facility remains secure and that the emergency is safely and satisfactorily dealt with.

**Notification of death, injury or serious illness**

**82.(1)** Where a child who is detained in a secure residential facility dies, the Director shall immediately notify

- (a) the parent or the appropriate adult in respect of that child; and
- (b) the Coroner and the Police Service.

(2) Where a child who is detained in a secure residential facility is injured or becomes seriously ill, the Director shall

- (a) immediately notify the parent or the appropriate adult in respect of that child; and
- (b) seek the appropriate medical treatment in respect of that child.

**Resources of the secure residential facility**

**83.** The resources of the secure residential facility are such money as Parliament may provide for the purpose of operating the secure residential facility.

**Responsibilities of a child in custody**

**84.(1)** A child shall, upon being admitted to a secure residential facility, be informed of the provisions of this Part and of the disciplinary action that may be

taken for violation of or failure to comply with a provision of this Part governing the conduct of a child detained in custody in a secure residential facility.

- (2) A child who is detained in a secure residential facility
- (a) is subject to the rules of conduct and discipline as set out in this Act or regulations made under this Act; and
  - (b) shall participate in the programmes devised by the Director under the authority of this Act or regulations made under this Act.

### **Infractions**

- 85.(1)** A child who is detained in a secure residential facility shall
- (a) maintain the living and work areas in a clean and tidy condition;
  - (b) be prompt in the performance of regular duties of work that may be assigned to the child;
  - (c) comply with all reasonable instructions given by a member of staff;
  - (d) maintain a high level of personal cleanliness;
  - (e) respect the rights and dignity of other children in the facility; and
  - (f) make reasonable efforts to avoid behaviour that interferes with or is disturbing to any other person in the facility.
- (2) A child who is detained in a secure residential facility and who violates or fails to comply with subsection (1) commits an infraction.

### **Misconduct**

- 86.(1)** No child detained in a secure residential facility shall
- (a) assault or threaten to assault another person;
  - (b) engage in sexual contact;
  - (c) damage private or public property;
  - (d) have possession of drugs or deal in drugs with any other person;

- (e) bring drugs into or take drugs out of a place of secure custody;
- (f) escape or be unlawfully at large from a place of secure custody;
- (g) give or offer a bribe or reward to any other person or receive a bribe or reward from any other person;
- (h) disobey or fail to obey a reasonable order of a member of staff;
- (i) refuse or fail to do assigned work;
- (j) waste food;
- (k) damage equipment or material;
- (l) commit an indecent act by gesture, actions or in writing toward another person;
- (m) gamble;
- (n) create or incite a disturbance likely to endanger the security of a secure residential facility;
- (o) use loud, indecent, abusive, profane or insulting language;
- (p) fail or refuse to observe fire safety rules and regulations or alter, damage or interfere with any fire procedure, fire exit or equipment;
- (q) interfere with the work performance of another child detained in a facility;
- (r) take, or convert for personal use or for the use of another person, any property without the consent of the rightful owner of the property;
- (s) leave an assigned area without proper authority;
- (t) obstruct an investigation conducted or authorized by the Director;
- (u) fail to abide by any term or condition of a reintegration order;
- (v) fail to participate actively in a compulsory programme;

- (w) violate or fail to comply with any enactment governing the conduct of a child detained in a secure residential facility;
  - (x) counsel, aid or abet another person to commit an act that constitutes a violation of or a failure to comply with any enactment;
  - (y) have in his possession an implement made, adapted for use or used for the purpose of facilitating his escape or the escape of another child;
  - (z) have in his possession an implement made, adapted for use or used for the purpose of causing or inflicting injury on another person in the facility; or
- (aa) attempt to do anything referred to in paragraphs (a) to (y).
- (2) A child detained in a secure residential facility who violates or fails to comply with subsection (1) commits an act of misconduct.
- (3) A member of staff may report a child in relation to an act of misconduct by delivering to the Director a written incident report.
- (4) Where a child is accused of committing an act of misconduct, the Director shall
- (a) advise the child of the nature of the accusation;
  - (b) conduct an investigation in respect of the accusation; and
  - (c) determine whether the child has committed an act of misconduct.

**Power of the Director to impose discipline on a child in a secure residential facility**

- 87.(1)** Corporal punishment, severe or frightening measures shall not be inflicted on a child in a secure residential facility.
- (2) The Director may impose disciplinary action on a child in a secure residential facility for any violation of or failure to comply with a provision of this Act or regulations made under this Act governing the conduct of the child in a secure residential facility.



(3) A Director who, after considering the circumstances, determines that a child in a secure residential facility has committed an infraction shall impose one or more of the following forms of disciplinary action:

- (a) verbal warning;
- (b) reduction or suspension of privileges for a definite period of time.

(4) A Director who, after considering the circumstances, determines that a child in a secure residential facility has committed an act of misconduct shall impose one or more of the following forms of disciplinary action:

- (a) verbal warning;
- (b) reduction or suspension of privileges for a definite period of time;
- (c) payment of part or all of the cost of repairing the damage done by the child;
- (d) performance of additional work; or
- (e) confinement for a definite period of time to an area assigned by the Director.

(5) Notwithstanding subsection (4), a Director may recommend to the Director of Public Prosecutions that a court proceeding be instituted against a child in a secure residential facility.

(6) A Director who has taken disciplinary action against a child in a secure residential facility shall advise the child of the appeal procedures.

### **Searches**

**88.(1)** An officer may conduct a search of a child in a secure residential facility where

- (a) the child is being transferred from one part of a secure residential facility to another part of that facility; or
- (b) the child is entering or departing from a secure residential facility.

(2) Where an officer believes, on reasonable and probable grounds, that a child has possession of or access to drugs, weapons or stolen property, the officer may at any time conduct a search of

- (a) all or any part of a secure residential facility;
- (b) a child detained in secure residential facility; or
- (c) the property of a child detained in a secure residential facility.

(3) Where a Director believes, on reasonable grounds, that a member of staff or a visitor to a secure residential facility

- (a) has possession of drugs, weapons or stolen property; or
- (b) is bringing or attempting to bring drugs, weapons or stolen property into or is taking or attempting to take drugs, weapons or stolen property out of the secure residential facility,

the Director may authorize a search of the member of staff, visitor or the property of the member of staff or visitor, including a vehicle in the care and control of the member of staff or visitor, that is located on the premises of the secure residential facility.

(4) No child detained in custody in a secure residential facility shall be searched by a person of the opposite sex.

(5) A child detained in a secure residential facility who refuses to be searched or resists a search may be separated from other children in the facility until the child submits to the search or until there is no longer a need for the search.

(6) For the purposes of this section, an "officer" is a person appointed or employed in the manner set out in section 75(2).

#### **Maintenance of order in secure residential facility**

**89.(1)** An officer of a secure residential facility shall maintain control of the facility by employing such means of reasoning, delaying tactics and other methods that do not involve the use of force against a child detained in a facility.

(2) Notwithstanding subsection (1), officer of a secure residential facility may take the appropriate action necessary

- (a) enforce maintain order within the secure residential facility;
- (b) prevent the child from escaping from the secure residential facility or returning a child to the secure residential facility from which he escaped;
- (c) protect the child or another person;
- (d) prevent the child from damaging property; or
- (e) conduct a search pursuant to section 88,

and such action shall be reasonable and not excessive having regard to the nature of the threat posed by the child and all other relevant circumstances of the case.

(3) An officer shall, where possible and practicable, arrange to have another officer present when taking any action pursuant to subsection (2).

(4) Where an officer takes any action against a child detained in secure residential facility pursuant to subsection (2), within 24 hours of the incident, that officer shall file a written report with the Director indicating the nature of the threat posed by the child and all other relevant circumstances of the case.

(5) For the purposes of this section, an "officer" is a person appointed or employed in the manner set out in section 75(2).

#### **Grievance procedures**

**90.(1)** Where a child detained in a secure residential facility believes that a member of staff has treated him in an unreasonable, unjust, oppressive, improperly discriminatory, arbitrary, unfair, unduly harsh or inappropriate manner, that child, his parent, appropriate adult or his attorney-at-law may file a grievance with the Director in the prescribed form within 10 days after the occurrence of the incident that gave rise to the grievance.

(2) Within 5 days after receiving the grievance referred to in subsection (1), the Director shall

- (a) hold a meeting with the child, his parent, appropriate adult or his attorney-at-law and the child shall be given an opportunity to explain the circumstances and the grounds of the grievance;
- (b) make a decision with respect to the grievance;
- (c) deliver to the child, his parent, appropriate adult or his attorney-at-law, in writing, the original and a copy of the decision, including reasons; and
- (d) indicate to the child, parent, appropriate adult or attorney-at-law that the appeal procedure under subsection (3) is available.

(3) A child who is aggrieved by a decision made under subsection (2) may appeal to a Judge in Chambers.

(4) Where the Director or a member of staff of the secure residential facility was involved in the incident that gave rise to the grievance, the child, his parent, appropriate adult or his attorney-at-law may appeal to a Judge in Chambers.

#### **Discharge of child from a secure residential facility**

**91.(1)** The Director shall discharge a child from a secure residential facility where

- (a) a magistrate or judge orders the discharge;
- (b) the term of the order or the custodial portion of the sentence made by a magistrate or judge has expired; or
- (c) the term of imprisonment has expired; or
- (d) the Minister approves the discharge pursuant to section 92.

(2) When a child is discharged from a secure residential facility, the Director

- (a) may deliver to the child the remaining quantities of any medication currently being taken by the child; and

- (b) shall deliver to the child any sums of money belonging to the child that are under the Director's control.
- (3) Sums of money referred to in paragraph (2)(b) may be delivered to the child in the form of a cheque made jointly payable to the child and to an appropriate co-payee chosen by the Director.
- (4) A Director may issue clothing to a child who is being discharged and who does not have suitable clothing.
- (5) A Director may reimburse a child upon discharge in an amount that the Director considers fair and reasonable for any property of the child that has been lost or damaged by the secure residential facility.
- (6) Where reasonably possible, upon a child's discharge the Director shall deliver to the child, parent or appropriate adult all of the child's property that is located in the secure residential facility.
- (7) A child, parent or appropriate adult, as the case may be, shall upon request give to the Director a receipt for all medication, sums of money, clothing or other property received under this section.
- (8) A Director may disburse funds in order to transport a child to the child's destination upon discharge.

**Discharge approval by Minister**

92. The Minister may approve the discharge of a child from a secure residential facility on application made to him in writing where that child has served two-thirds of his sentence or term of the order or the custodial portion of the sentence made by a magistrate or judge.

**Appeal**

93. A person who is aggrieved by a decision made under this Part may, within 14 days of the decision, appeal to a Judge in Chambers.

PART XI

REINTEGRATION

**Establishment of Reintegration Board**

- 94.(1) There shall be a Board to be known as the "Reintegration Board".
- (2) The *Fifth Schedule* has effect with respect to the constitution of the Reintegration Board and otherwise in relation thereto.

**Functions of the Reintegration Board**

95. The functions of the Reintegration Board are to
- (a) hear and consider an application for a reintegration order;
  - (b) grant, revoke or suspend a reintegration order;
  - (c) assign conditions to a reintegration order;
  - (d) maintain a register of its decisions;
  - (e) keep statistical and other records in relation to its work; and
  - (f) make annual reports to the Minister concerning its work.

**Remuneration of the members of Reintegration Board**

96. The members of the Reintegration Board shall be paid such remuneration as the Minister may determine.

**Staff**

97. The Reintegration Board may appoint and employ such other officers and employees as it deems necessary, on such terms and conditions as it thinks fit.

**Expenses**

98. The expenses of the Reintegration Board shall be defrayed out of the moneys voted for the purpose by Parliament.

**Confidentiality**

99.(1) All documents, information or matters disclosed in the discharge of the functions of the Board shall be regarded as secret and confidential and shall not be disclosed by a member of the Reintegration Board or any person concerned with the Reintegration Board except where those disclosures are made in compliance with

- (a) an order of the High Court; or
- (b) the Laws of Barbados.

(2) A person who contravenes this section is guilty of an offence and is liable on summary conviction to a fine of \$10 000 or to imprisonment for 2 years or to both.

**Protection of members of the Reintegration Board**

100. No action, suit, prosecution or other proceeding shall be brought or instituted personally against any member of the Reintegration Board in respect of any act done *bona fide* in pursuance or execution or intended execution, of the provisions of this Act.

**Eligibility for grant of reintegration order**

101.(1) A child detained at a secure residential facility or a prison who has completed two-thirds of his sentence and has a record of good behaviour, shall be eligible for the grant of a reintegration order.

(2) The Director of a secure residential facility or the Superintendent of Prisons shall, at the end of each month or within such period as the Reintegration Board

shall determine, submit to the Reintegration Board, a list of the children who will be eligible for the grant of a reintegration order.

(3) The Director of a secure residential facility or the Superintendent of Prisons shall give written notice of eligibility for the grant of a reintegration order to the child, parent or appropriate adult or attorney-at-law of the child who is the subject of the reintegration order within 2 months of the eligibility of the relevant child.

#### **Application for a reintegration order**

**102.(1)** A child who is eligible for the grant of a reintegration order under section 101, may apply in the prescribed manner to the Reintegration Board for the grant of that order.

(2) An application under subsection (1) shall contain the following particulars:

- (a) the full name and age of the applicant;
- (b) the nature of the offence of which the applicant was convicted and sentenced;
- (c) any other information on which the applicant relies in support of his application; and
- (d) any other information which may be requested by the Reintegration Board.

(3) The Director of a secure residential centre or the Superintendent of Prisons, as the case may be, shall furnish to the Reintegration Board,

- (a) a report prepared by him in respect of the conduct of the applicant while in the secure residential facility or a prison, as the case may be; and
- (b) a copy of a report containing an opinion by a psychiatrist or psychologist or any other person as may be designated by the Reintegration Board stating whether the applicant is fit to be released.



**Grant of a reintegration order**

**103.(1)** The Reintegration Board shall, in determining whether to grant a reintegration order may consider the following factors:

- (a) the conduct of the child while in a secure residential facility or a prison;
- (b) the availability of supervision and support for the child during the period stated in a reintegration order;
- (c) the likelihood that the child will fail to abide by any of the terms and conditions of a reintegration order;
- (d) the benefit of the reintegration order to the child, to the child's family or to other persons;
- (e) the risk to the public posed by the reintegration order being granted to the child;
- (f) the information contained in the reports referred to in section 101(3); and
- (g) such other factors as the Reintegration Board considers relevant.

(3) Within 14 days after receipt of an application under section 101(1) for a grant of a reintegration order, the Reintegration Board shall

- (a) advise the child, parent or appropriate adult or attorney-at-law of the child that is the subject of the reintegration order whether or not the reintegration order is granted;
- (b) indicate any terms and conditions, where the reintegration order is granted; and
- (c) give reasons where the reintegration order is not granted.

(4) The Reintegration Board may order the Director of a secure residential facility or the Superintendent of Prisons, as the case may be, to disburse funds to transport a child to and from the child's destination during the period covered in the reintegration order.

**Reintegration order**

**104.(1)** A reintegration order shall have effect for the period specified therein and shall require the holder of the reintegration order to submit during that period to the supervision of a probation officer appointed by the Chief Probation Officer and shall contain such requirements as the Reintegration Board considers necessary for securing the supervision and facilitating the rehabilitation of the holder of the reintegration order.

(2) Notwithstanding the generality of subsection (1), a reintegration order may include the following terms and conditions:

- (a) attend a school or any other educational or training institution;
- (b) obtain or continue employment or perform domestic or other duties required by the child's family;
- (c) participate in a programme specified by the Director of a secure residential facility or the Superintendent of Prisons that will enable the child to better carry out employment or improve his or her education or training;
- (d) attend an out-patient treatment programme where the child has a history of abusing drugs or alcohol or other like programme that would provide services that are suitable to addressing the child's needs; or
- (e) attend a community based service programme.

**Revocation or suspension of reintegration order**

**105.(1)** The Reintegration Board may suspend or revoke an authorization of reintegration order where the Director is satisfied, on reasonable grounds, that

- (a) the child is failing to abide by or is about to fail to abide by any of the terms and conditions of the reintegration order;
  - (b) the child has committed an offence while under the reintegration order;
- or

- (c) the revocation is necessary in order to protect the best interests of the child or the public.
- (2) Where the Reintegration Board intends to suspend or revoke a reintegration order, the Reintegration Board shall, within a reasonable time, give written notice of that intention to
  - (a) the Director of the relevant secure residential facility or the Superintendent of Prisons, as the case may be; and
  - (b) the child, parent or appropriate adult or attorney-at-law of the child that is the subject of the reintegration order.
- (3) Where the reintegration order has been suspended or revoked, the order shall cease to have effect and on completion of the notifications required under subsection (2) the child shall be returned to the relevant facility or prison.
- (4) Where the child is not returned to the secure residential facility, the Chairman of the Reintegration Board shall issue a warrant for the apprehension of the child, who shall, upon apprehension, be returned to the relevant facility or prison.
- (5) A parent or appropriate adult or attorney-at-law of the child who is the subject of the reintegration order who receives the notification referred to in subsection (2)(b) and fails to return the child to the relevant secure residential facility or prison is guilty of an offence and is liable on summary conviction to a fine of \$1 000 or to imprisonment for one year or to both.
- (6) Where a child who is the subject of a reintegration order is returned to the relevant secure residential facility or prison in accordance with subsection (3), the period spent by that child in the relevant secure residential facility or prison while his reintegration order is suspended or revoked, as the case may be, shall be counted as a part of the sentence in respect of which the reintegration order was granted and shall be taken into account for the purpose of determining the date of the expiration of that sentence.

**Forfeiture of reintegration**

**106.(1)** A child who during the period of the reintegration order is convicted of an offence punishable by imprisonment for 12 months or more thereby forfeits his reintegration and such forfeiture shall take effect from the date of conviction.

(2) Where there is an appeal against a conviction referred to in subsection (1) and the conviction is quashed, the forfeiture shall be set aside.

(3) The court before which the child referred to in subsection (1) is convicted shall state whether the sentence in respect of an offence referred to in subsection (1) shall be concurrent with or consecutive to the sentence in respect of which the reintegration is being forfeited.

**Reapplication**

**107.(1)** Where an application for a reintegration order was refused under section 101(3) the child may reapply to the Reintegration Board after 4 months from the date of the refusal.

(2) A child, in respect of whom a reintegration order has been suspended or revoked, may reapply for a reintegration order after 4 months from the date of suspension or revocation or such lesser period as may be determined by the Reintegration Board.

(3) A child who forfeits reintegration under section 104 shall not be entitled to reapply for a reintegration order in relation to the sentence in respect of which the reintegration was forfeited.

**Reintegration continuing education order**

**108.(1)** A child detained in a secured residential facility who will turn 18 years of age before the completion of his sentence, has a record of good behaviour and is seeking to continue or complete his education may apply to the Reintegration Board in the prescribed form for the grant of a reintegration continuing education order.

(2) The Director of a secure residential facility shall give written notice of eligibility for the grant of a reintegration order to the child, parent or appropriate adult or attorney-at-law of the child who is the subject of the reintegration continuing education order within 6 months of the eligibility of the relevant child.

(3) Sections 101 to 106 shall apply to a reintegration continuing education order with such adaptations or modifications as the circumstances require.

## PART XII

### MISCELLANEOUS

#### **Regulations**

**109.** The Minister may make regulations generally to give effect to this Act.

#### **Amendment of Schedules**

**110.** The Minister may by order amend the *First, Second, Third, Fourth* and *Fifth Schedules* to this Act.

#### **Transitional**

**111.(1)** Where proceedings for an offence were commenced under the *Juvenile Offenders Act*, Cap. 138, the offence shall, after the coming into force of this Act, be dealt with, tried and determined in accordance with this Act.

(2) Where under this Act the penalty or punishment is mitigated or reduced in relation to the penalty or punishment that would have been applicable had this Act not come into force, the provisions of this Act relating to penalty or punishment shall apply.

#### **Consequential amendments**

**112.** The enactments set out in Column 1 of the *Sixth Schedule* are amended in the manner specified in Column 2 of the *Sixth Schedule*.

**Repeal**

**113.** The

(a) *Juvenile Offenders Act, Cap. 138*; and

(b) *Reformatory and Industrial Schools Act, Cap. 169*

are repealed.

**Commencement**

**114.** This Act comes into force on a date to be fixed by proclamation.

**FIRST SCHEDULE**

*(Sections 7, 16, 41, 51, 59 and 110)*

1. Making use of threatening, violent or obscene language
2. Riotous, indecent, disorderly or insulting behaviour in any public place
3. Trespass
4. Praedial larceny
5. Offences under section 62 of the *Police Act*, Cap. 167
6. Offences under the *Road Traffic Act*, Cap. 295
7. Summary offences carrying a penalty of 5 years imprisonment or less

**SECOND SCHEDULE**

*(Sections 16, 19, 41, 59 and 110)*

1. Summary offences under the *Criminal Damage Act*, Cap. 113B
2. Summary offences under the *Drug Abuse (Prevention and Control) Act*, Cap. 131
3. Summary offences under of the *Firearms Act*, Cap. 179
4. Summary offences under the *Theft Act*, Cap. 155
5. Offences that are triable summarily or on indictment
6. Indictable offences carrying a penalty of over 5 years but not exceeding 14 years imprisonment



**THIRD SCHEDULE**

*(Sections 19, 20, 29, 30, 46, 59 and 110)*

1. Murder
2. Manslaughter
3. Indictable offences under the *Criminal Damage Act*, Cap. 113B
4. Indictable offences under the *Drug Abuse (Prevention and Control) Act*, Cap. 131
5. Indictable offences under the *Firearms Act*, Cap. 179
6. Indictable offences under the *Theft Act*, Cap. 155
7. Indictable offences carrying a penalty of 15 years imprisonment or more

**FOURTH SCHEDULE***(Sections 72 and 110)***Constitution of Child Justice Board**

1. The Child Justice Board shall consist of the Superintendent of Prisons or his nominee, a magistrate, the Chief Probation Officer or his nominee and 6 other members appointed by the Minister by instrument in writing.

**Tenure**

2.(1) The members of the Child Justice Board shall hold office for a period of 3 years but shall be eligible for reappointment.

(2) The Minister shall appoint a member of the Child Justice Board as Chairman and another member as Deputy-Chairman.

(3) If a vacancy occurs in the office of the Chairman or Deputy Chairman the Minister shall fill the vacancy as soon as possible from among the members of the Child Justice Board.

**Resignation of a member of the Child Justice Board**

3. A member may at any time resign his office by instrument in writing addressed to the Chairman, who shall forthwith forward the instrument to the Minister, and upon the receipt by the Chairman of the instrument the member ceases to be a member of the Child Justice Board.

**Resignation of the Chairman of the Child Justice Board**

4.(1) The Chairman may at any time resign his office by instrument in writing addressed to the Minister, and the Chairman's resignation shall take effect upon the receipt of the instrument by the Minister.

(2) Where the Chairman ceases to be Chairman, he also ceases to be a member.

**Publication in *Official Gazette***

5. The names of all members of the Child Justice Board as first constituted and every change in the membership thereafter shall be published in the *Official Gazette*.

**First meeting**

6. The first meeting of the Child Justice Board shall be held at one of the secure residential facilities not later than one month after all the members of the Child Justice Board have been appointed.

**Secretary**

7. The secretary shall be selected from among the members of the Child Justice Board.

**Quorum**

8. Five members of the Child Justice Board constitute a quorum.

**Meetings**

9.(1) The Child Justice Board shall regulate its own procedure.

(2) The Chairman may, at any time, call a meeting of the Child Justice Board and shall call a meeting within 14 days

(a) of a request for that purpose addressed to him in writing and signed by 3 members of the Child Justice Board; or

(b) of a direction to that effect addressed to him in writing and signed by the Minister.

(3) The Chairman, or, in his absence, the Deputy Chairman, shall preside at meetings of the Child Justice Board.

(4) In the absence of the Chairman or Deputy Chairman, or in the event that the Chairman or Deputy Chairman is unable to act, the members of the Child

Justice Board present and constituting a quorum shall elect one of their members to preside at that meeting.

(5) Subject to this Act, the functions of the Child Justice Board shall not be affected by any vacancy in the membership thereof.

**Minutes**

**10.** The Child Justice Board shall keep minutes of its proceedings and submit the minutes to the Minister within 2 weeks after each meeting.

**Visits to secure residential facilities**

**11.(1)** The members of the Child Justice Board shall pay frequent visits to the secure residential facilities and at least 2 members of the Child Justice Board shall visit at least once a month.

(2) Except at the request of the Child Justice Board, during a visit neither the Director of a secure residential facility nor the next senior member of staff shall accompany the members of the Child Justice Board.

(3) Subject to subparagraph (2), no person other than the Director of a secure residential facility or his nominee may be permitted to accompany members of the Child Justice Board.

**FIFTH SCHEDULE***(Sections 94 and 110)***Constitution of Reintegration Board**

1.(1) The President, by instrument under the Public Seal acting on the recommendation of the Minister shall appoint the members of the Reintegration Board.

(2) The Reintegration Board shall comprise the following persons:

- (a) a present or former member of the Judiciary;
- (b) the Permanent Secretary of the Ministry of Attorney-General or his nominee;
- (c) the Permanent Secretary of the Ministry of Home Affairs or his nominee;
- (d) the Superintendent of Prisons or his nominee;
- (e) the Chief Probation Officer or his nominee;
- (f) the Commissioner of Police or his nominee;
- (g) the President of the Barbados Bar Association or his nominee;
- (h) a psychiatrist;
- (i) a criminologist or social worker;
- (j) a psychologist;
- (k) a representative from a religious institution;
- (l) a representative from civil society; and
- (m) a representative of the youth.

(3) The member of the Judiciary referred to in subparagraph (2)(a) shall be the Chairman and the Deputy Chairman shall be elected from among the members of the Reintegration Board.

(4) For the purposes of this paragraph, “youth” means a person who is under the age of 30 years but older than the age of 18 years.

#### **Tenure**

2.(1) A member of the Reintegration Board shall hold office for a period of 3 years and shall be eligible for reappointment.

(2) Where a vacancy is created by the death, resignation or removal from office of a member, a person may be appointed in accordance with paragraph 1(1) to fill that vacancy.

#### **Resignation**

3.(1) The Chairman or Deputy Chairman may at any time resign his office by instrument in writing addressed to the Minister and upon the date of receipt by the Minister of the instrument, the Chairman or Deputy Chairman ceases to be Chairman or Deputy Chairman and a member of the Reintegration Board.

(2) A member may at any time resign his office by instrument in writing addressed to the Chairman, who shall forthwith cause the instrument to be forwarded to the Minister and upon the date of the receipt by the Minister of the instrument, that member ceases to be a member of the Reintegration Board.

#### **Publication in *Official Gazette***

4. The names of all members of the Reintegration Board as first constituted and every change in the membership thereafter shall be published in the *Official Gazette*.

**Meetings**

5.(1) The Reintegration Board shall regulate its own procedure and shall meet at least once every quarter and at such other times as may be necessary or expedient for the transaction of the business of the Reintegration Board.

(2) The minutes of the meetings of the Reintegration Board shall be kept in proper form.

(3) The decisions of the Reintegration Board shall be by majority vote and shall be issued in writing.

**Quorum**

6. Seven members of the Reintegration Board shall constitute a quorum.

**Minutes**

7. The Reintegration Board shall submit the minutes of the meetings of the Reintegration Board to the Minister as soon as possible after they have been approved by the Reintegration Board.

## SIXTH SCHEDULE

(Section 112)

## CONSEQUENTIAL AMENDMENTS

Column 1	Column 2
<i>Enactments</i>	<i>Amendments</i>
1. <i>Bail Act, Cap. 122A</i>	<p>In section 2 delete</p> <p>(a) the definition of the word "child" and substitute the following:</p> <p style="padding-left: 40px;">" "child" means a person under the age of 18;";</p> <p>(b) the definition of the word "young person".</p> <p>In section 5,</p> <p>(a) delete paragraph (b) of subsection (1) and substitute the following:</p> <p style="padding-left: 40px;">"(b) the court is satisfied that the defendant should be kept in custody</p> <p style="padding-left: 80px;">(i) for his own protection;</p> <p style="padding-left: 80px;">(ii) for the protection of the community; or</p> <p style="padding-left: 80px;">(iii) if he is a child, for his own welfare;";</p> <p>(b) in paragraph (b) of subsection (3) delete the words "or young person";</p> <p>(c) delete paragraph (c) of subsection (5) and substitute the following:</p>



*Sixth Schedule - (Cont'd)**CONSEQUENTIAL AMENDMENTS - (Cont'd)*

Column 1	Column 2
<i>Enactments</i>	<i>Amendments</i>
1. <i>Bail Act, Cap. 122A - (Cont'd)</i>	"(c) references to a defendant being kept in custody or being in custody include, where the defendant is a child being detained pursuant to the provisions of the <i>Child Justice Act, 2023 (Act 2023- )</i> ;"

In section 12, delete subsection (5) and substitute the following:

"(5) If a parent or guardian of a child consents to be a surety for the child for the purposes of this subsection, the parent or guardian may be required to ensure that the child complies with any requirement imposed on him by virtue of subsection (4), but

- (a) no requirement shall be imposed on the parent or the guardian of a child by virtue of this subsection where it appears that the child will attain the age of 18 before the time to be appointed for him to surrender to custody; and
- (b) the parent or guardian shall not be required to secure compliance with any requirement to which his consent does not extend and shall not, in respect of those requirements to which his consent does extend, be bound in a sum greater than \$500."

*Sixth Schedule - (Cont'd)**CONSEQUENTIAL AMENDMENTS - (Cont'd)*

Column 1	Column 2
<i>Enactments</i>	<i>Amendments</i>
1. <i>Bail Act, Cap. 122A - (Concl'd)</i>	In section 18, delete subsection (7).
2. <i>Community Legal Services Act, Cap. 112A</i>	In Part I of the <i>First Schedule</i> , delete item (f) and substitute the following:  <p style="margin-left: 40px;">"(f) all criminal and administrative proceedings involving a child as defined by the section 2 of the <i>Child Justice Act, 2023 (Act 2023- )</i>;"</p>
3. <i>Criminal Law (Arrestable Offences) Act, Cap. 125A</i>	In the <i>Schedule</i> , delete item 15 and substitute the following:  <p style="margin-left: 40px;">15. Section 76 of the <i>Child Justice Act, 2023 (Act 2023- )</i>."</p>
4. <i>Criminal Records (Rehabilitation of Offenders) Act, Cap. 127A</i>	In section 3 delete subsection (4) and substitute the following:  <p style="margin-left: 40px;">"(4) Notwithstanding subsection (2), where a person was under the age of 18 at the time of conviction of</p> <p style="margin-left: 80px;">(a) a summary offence or offences and has not been convicted of any other offences between the time of his eighteenth year and twentieth year; or</p> <p style="margin-left: 80px;">(b) an indictable offence or offences and has not been convicted of any other offence between the time of his eighteenth year and twenty-third year, then for the purpose of this Act, the person shall be treated as a rehabilitated person and the conviction shall be treated as spent."</p>

*Sixth Schedule - (Cont'd)**CONSEQUENTIAL AMENDMENTS - (Cont'd)*

Column 1	Column 2
<i>Enactments</i>	<i>Amendments</i>
4. <i>Criminal Records (Rehabilitation of Offenders) Act, Cap. 127A - (Concl'd)</i>	<p>In section 5(4) delete the words "<i>Reformatory and Industrial Schools Act</i>" and substitute the words "<i>Child Justice Act, 2023 (Act 2023- )</i>."</p> <p>In Part III of the <i>First Schedule</i> delete the words "Juvenile Correctional Centres and Places of Safety" and substitute the following:</p> <p style="padding-left: 40px;">"Child Correctional Centres, Places of Safety, Residential Protection and Treatment Centres and Secure Residential Facilities".</p>
5. <i>Drug Abuse (Prevention and Control) Act, Cap. 131</i>	<p>In section 2 delete</p> <p>(a) the definition of the word "child" and substitute the following:</p> <p style="padding-left: 80px;">" "child" means a person under the age of 18;"; and</p> <p>(b) the definition of the word "young person".</p> <p>Delete all references in the Act to the words "or young person".</p>
6. <i>Education Act, Cap. 41</i>	In section 64B delete subsections (3) and (4).

*Sixth Schedule - (Cont'd)**CONSEQUENTIAL AMENDMENTS - (Cont'd)*

Column 1	Column 2
<i>Enactments</i>	<i>Amendments</i>
7. <i>Magistrate's Courts Act, Cap. 116A</i>	<p>Delete all references to the word "juvenile court" and substitute the words "child justice court" throughout the Act.</p> <p>In section 2,</p> <p>(a) in subsection (1),</p> <p style="padding-left: 2em;">(i) delete the definition of the word "child" and substitute the following:</p> <p style="padding-left: 4em;">" "child" means a person under the age of 18;"; and</p> <p style="padding-left: 2em;">(ii) insert the following definition in the appropriate alphabetical order:</p> <p style="padding-left: 4em;">" "child justice court" means a court sitting to hear charges against children."; and</p> <p>(b) delete subsection (6).</p> <p>Section 51 is deleted and substituted by the following:</p> <p><b>"Summary trial of information against child for an indictable offence</b></p> <p><b>51.(1)</b> Where a child appears or is brought before a magistrate on an information charging him with an indictable offence, he shall be tried summarily unless</p> <p style="padding-left: 2em;">(a) he is charged with an offence mentioned in the <i>Third Schedule to the Child Justice Act, 2023</i> (Act 2023- ); or</p>

*Sixth Schedule - (Cont'd)**CONSEQUENTIAL AMENDMENTS - (Cont'd)*

Column 1	Column 2
<i>Enactments</i>	<i>Amendments</i>
7. <i>Magistrate's Courts Act, Cap. 116A - (Cont'd)</i>	(b) he is charged jointly with a person who has attained the age of 18 and the magistrate considers it necessary in the interests of justice to commit them both for trial,

and accordingly in a case falling within paragraph (a) or (b), the magistrate shall commit the accused for trial if either he is of the opinion that there is sufficient evidence to put him on trial or he has power under section 20 so to commit him without consideration of the evidence.

(2) Where, in a case falling within subsection (1)(b), a magistrate commits a child for trial for an offence with which he is charged jointly with a person who has attained the age of 18, the magistrate may also commit him for trial for any other indictable offence with which he is charged at the same time, whether jointly with the person who has attained the age of 18 or not, if that other offence arises out of circumstances that are the same as or connected with those giving rise to the first-mentioned offence.

(3) If on trying a person summarily in pursuance of subsection (1) the magistrate finds him guilty, he may impose a sentence in accordance with Part VII of the *Child Justice Act, 2023* (Act 2023- ).".

Delete the crossheading which states the words "Power to Remit Person Under 16 for Trial to Child Justice Court" and substitute the following:

**"Power to Remit a child for Trial to Child Justice Court".**

*Sixth Schedule - (Cont'd)**CONSEQUENTIAL AMENDMENTS - (Cont'd)*

Column 1	Column 2
<i>Enactments</i>	<i>Amendments</i>
7. <i>Magistrate's Courts Act, Cap. 116A - (Cont'd)</i>	<p>Delete section 56 and substitute the following:</p> <p><b>"Power of magistrate to remit a child for trial to a Child Justice Court in certain circumstances</b></p> <p>56.(1) Where</p> <p style="padding-left: 2em;">(a) a child appears or is brought before a court other than a child justice court on information jointly charging him and one or more other persons with an offence; and</p> <p style="padding-left: 2em;">(b) that other person, or any of those other persons, has attained the age of 18,</p> <p>subsection (2) shall have effect.</p> <p>(2) Where</p> <p style="padding-left: 2em;">(a) the magistrate proceeds to the summary trial of the information in the case of both or all of the accused, and the older accused or each of the older accused pleads guilty; or</p> <p style="padding-left: 2em;">(b) the magistrate</p> <p style="padding-left: 4em;">(i) in the case of the older accused or each of the older accused, proceeds to inquire into the information as an examining magistrate and either commits him for trial or discharges him; and</p>

*Sixth Schedule - (Cont'd)*

*CONSEQUENTIAL AMENDMENTS - (Cont'd)*

Column 1	Column 2
<i>Enactments</i>	<i>Amendments</i>
<p>7. <i>Magistrate's Courts Act, Cap. 116A - (Cont'd)</i></p>	<p>(ii) in the case of the child, proceeds to the summary trial of the information, then, if in either situation the child pleads not guilty, the magistrate may before any evidence is called in his case remit him for trial to the child justice court.</p> <p>(3) A person remitted to a child justice court under subsection (2) shall be brought before and tried by a child justice court accordingly.</p> <p>(4) Where a person is so remitted to a child justice court</p> <p style="padding-left: 2em;">(a) he shall have no right of appeal against the order of remission; and</p> <p style="padding-left: 2em;">(b) the magistrate may give such directions as appear to be necessary with respect to his custody or for his release on bail until he can be brought before the child justice court.</p> <p>(5) In this section "the older accused" means such one or more of the accused as have attained the age of 18."</p>

Delete the shoulder note of section 64 and substitute the following:

**"Restriction on fines in respect of a child".**

Section 71 is repealed.

*Sixth Schedule - (Cont'd)**CONSEQUENTIAL AMENDMENTS - (Cont'd)*

Column 1	Column 2
<i>Enactments</i>	<i>Amendments</i>
7. <i>Magistrate's Courts Act, Cap. 116A - (Cont'd)</i>	<p>Delete section 115 and substitute the following:</p> <p><b>"Enforcement of fines imposed where the offender is a child</b></p> <p>115.(1) Where an offence has been committed by a child which involves a default consisting in failure to pay, or want of sufficient distress to satisfy, an amount adjudged to be paid by a conviction, the magistrate may, subject to the following provisions of this section, make</p> <p style="margin-left: 40px;">(a) an order requiring the defaulter's parent or guardian to enter into a recognizance to ensure that the defaulter pays so much of that amount as remains unpaid; or</p> <p style="margin-left: 40px;">(b) an order directing so much of that amount as remains unpaid to be paid by the defaulter's parent or guardian instead of by the defaulter.</p> <p>(2) An order under subsection (1) shall not be made in respect of a defaulter</p> <p style="margin-left: 40px;">(a) in pursuance of paragraph (a) of that subsection, unless the parent or guardian in question consents;</p> <p style="margin-left: 40px;">(b) in pursuance of paragraph (b) of that subsection, unless the magistrate is satisfied in all the circumstances that it is reasonable to make the order.</p>



*Sixth Schedule - (Cont'd)**CONSEQUENTIAL AMENDMENTS - (Cont'd)*

<i>Column 1</i>	<i>Column 2</i>
<i>Enactments</i>	<i>Amendments</i>
<i>7. Magistrate's Courts Act, Cap. 116A - (Cont'd)</i>	<p>(3) A magistrate shall not make an order under subsection (1) in consequence of a default of a child consisting in failure to pay or want of sufficient distress to satisfy an amount adjudged to be paid by a conviction unless the magistrate has since the conviction inquired into the defaulter's means in his presence on at least one occasion.</p> <p>(4) A magistrate shall not make an order under subsection (1) unless the magistrate is satisfied that the defaulter has, or has had since the date on which the amount in question was adjudged to be paid, the means to pay the amount or any instalment of it on which he has defaulted, and refuses or neglects or, as the case may be, has refused or neglected, to pay it.</p> <p>(5) An order under subsection (1) may be made in pursuance of paragraph (b) of that subsection against a parent or guardian who, having been required to attend, has failed to do so but, save as aforesaid, an order under that subsection shall not be made in pursuance of that paragraph without giving the parent or guardian an opportunity of being heard.</p> <p>(6) A parent or guardian may appeal to the High Court against an order under subsection (1) made in pursuance of paragraph (b) of that subsection.</p> <p>(7) Any amount ordered under subsection (1)(b) to be paid by a parent or guardian may be recovered from him in like manner as if the order had been made on the conviction of the parent or guardian of an offence.</p>

*Sixth Schedule - (Cont'd)**CONSEQUENTIAL AMENDMENTS - (Cont'd)*

Column 1	Column 2
<i>Enactments</i>	<i>Amendments</i>
7. <i>Magistrate's Courts Act</i> , Cap. 116A - (Concl'd)	<p>(8) In this section</p> <p style="padding-left: 40px;">"amount adjudged to be paid by a conviction" means any fine, costs, compensation or other amount adjudged to be paid by an order made on a finding of guilt, including an order made under the <i>Child Justice Act, 2023</i> (Act 2023- );</p> <p style="padding-left: 40px;">"guardian", in relation to a child, means a person appointed, according to law, to be his guardian by deed or will, or by order of a court of competent jurisdiction."</p>
	<i>In the Fifth Schedule</i>
	<p>(a) in the column entitled "Number" delete the words "Cap. 169";</p> <p>(b) in the column entitled "Short title" delete the words "Reformatory and Industrial Schools Act"; and</p> <p>(c) in the column entitled "Proceedings to which section 85 applies" delete the words " section 43".</p>
8. <i>Penal System Reform Act</i> , Cap. 139	<p><b>In the long title</b></p> <p>(a) delete the semi-colon appearing after the words "powers of sentencing" and substitute a full-stop; and</p> <p>(b) delete the following:</p>

*Sixth Schedule - (Cont'd)**CONSEQUENTIAL AMENDMENTS - (Cont'd)*

Column 1	Column 2
<i>Enactments</i>	<i>Amendments</i>
8. <i>Penal System Reform Act</i> , Cap. 139 - (Cont'd)	"by an amendment to the <i>Juvenile Offenders Act</i> to raise the age of criminal responsibility; and for connected and incidental purposes."

In section 2 delete the definition of "custodial sentence" and substitute the following:

"custodial sentence" means a sentence of imprisonment or of detention in a secure residential facility or a residential protection and treatment facility as defined by the *Child Justice Act, 2023* (Act 2023- );".

Section 5 is repealed.

Delete section 10 and substitute the following:

**"Attendance centre orders**

**10.(1)** Where a court has the power to deal with a person under section 9 of the *Probation of Offenders Act*, Cap. 146 for failure to comply with any of the requirements of a probation order, the court may, if it has been notified by the Minister that an attendance centre is available for the reception of persons of that person's description, order that person to attend at such a centre, to be specified in the order, for such number of hours as may be so specified.

(2) An order under this section is referred to in this Act as an "attendance centre order".

(3) An attendance centre order shall not be made in the case of an offender who has been previously sentenced to imprisonment."

*Sixth Schedule - (Concl'd)**CONSEQUENTIAL AMENDMENTS - (Concl'd)*

Column 1	Column 2
<i>Enactments</i>	<i>Amendments</i>
8. <i>Penal System Reform Act, Cap. 139 - (Concl'd)</i>	<p>In section 13</p> <p>(a) subsection (1), delete the word "16" and substitute the word "18";</p> <p>(b) delete subsection (2);</p> <p>(c) subsection (5), delete paragraph (b) and substitute the following:</p> <p style="padding-left: 40px;">"(b) be more than 240."</p> <p>In section 17(1) delete the word "16" and substitute the word "18".</p>
9. <i>Magistrate's Courts (Criminal Procedure) Rules, 2001 (S.I. 2001/98)</i>	<p>In rule 30, paragraph (1), delete</p> <p>(a) the semi-colon and the word "and" in sub-paragraph (j) and substitute a full-stop; and</p> <p>(b) sub-paragraph (k).</p> <p>In the <i>Second Schedule</i> delete the words "The fees payable by juveniles shall be in the discretion of the magistrate." and substitute the following:</p> <p style="padding-left: 40px;">"The fees payable by a person under the age of 18 years shall be in the discretion of the magistrate."</p>

CHILD JUSTICE BILL

EXPLANATORY MEMORANDUM

The Child Justice Bill, 2023 makes provision for the reform of the criminal law applicable to children and the repeal of the

- (a) *Juvenile Offenders Act*, Cap. 138; and
- (b) *Reformatory and Industrial Schools Act*, Cap. 169.

PART I  
PRELIMINARY

- Clause 1:** states the short title.
- Clause 2:** provides for the definitions which aid in the interpretation and understanding of the Bill.
- Clause 3:** provides for the purpose of the Bill.

PART II  
APPLICATION AND CRIMINAL RESPONSIBILITY

- Clause 4:** makes provision for the scope of the application of the Bill.
- Clause 5:** states that a child under the age of 12 years is not capable of committing a criminal offence.
- Clause 6:** sets out the principles to be applied when dealing with a child pursuant to functions to be performed pursuant to the legislation.

PART III  
ASSESSMENT OF A CHILD

- Clause 7:** sets out the procedure to be followed where a police officer encounters a child that has come into conflict with the law.
- Clause 8:** sets out the procedure to be followed by a probation officer in assessment of a child after that child has been apprehended by a police officer under clause 6.
- Clause 9:** states the persons who shall or may attend an assessment.
- Clause 10:** states the powers and duties of a probation officer prior to assessment.
- Clause 11:** states the powers and duties of a probation officer at assessment.

PART IV  
SECURING ATTENDANCE OF A CHILD AT INITIAL INQUIRY

- Clause 12:** states the methods of securing attendance of a child at initial inquiry.
- Clause 13:** makes provision for the issue of a summons in relation to attendance of an initial inquiry.
- Clause 14:** makes provision for the issue of a notice in relation to attendance of an initial inquiry.
- Clause 15:** makes provision for the procedure applicable where a police officer is uncertain of the age of a person suspected to have committed an offence especially where that person is suspected to be a child.
- Clause 16:** sets out the procedure for release of a child into care of the parent or the appropriate adult before the initial inquiry.
- Clause 17:** grants the Director of Public Prosecutions the power to authorise the release of a child into care of the parent or the appropriate adult before the initial inquiry.
- Clause 18:** sets out the duties of the police officer and the person into who care a child is released pursuant to clauses 16 or 17.
- Clause 19:** sets out the procedure for release of a child on recognizance prior to initial inquiry.
- Clause 20:** states that a police officer shall not release a child accused of an offence referred to in the *Third Schedule*.
- Clause 21:** states that a child not released pursuant to clause 20 shall be detained in a secure residential facility as defined by clause 2.
- Clause 22:** sets out the procedure to be followed where a child is injured, becomes ill or dies in police custody.
- Clause 23:** imposes an obligation of a police officer in charge of a police station to keep a register of children who are to attend an initial inquiry.

PART V  
INITIAL INQUIRY AND DIVERSION

- Clause 24:** states the nature and objectives of an initial inquiry.
- Clause 25:** identifies the persons who must or may attend an initial inquiry.
- Clause 26:** sets out the procedure for conducting an initial inquiry.
- Clause 27:** states the powers and duties of a magistrate with respect to an initial inquiry.
- Clause 28:** makes it an offence for a person to fail to attend an initial inquiry where directed to do so.
- Clause 29:** makes provision for the release of a child into care of parent or appropriate adult where the initial inquiry is not disposed of at the first appearance of the child before a magistrate and it is in the interest of justice to do so.
- Clause 30:** states the circumstances for detaining a child in a secure residential facility after the first appearance of the child before a magistrate at an initial inquiry.
- Clause 31:** states the circumstances for postponing an initial inquiry.
- Clause 32:** states the circumstances for postponing an initial inquiry for a more detailed assessment.
- Clause 33:** states the circumstances for making a decision to divert a matter.
- Clause 34:** states the purposes for diversion.
- Clause 35:** states the circumstances for a child's eligibility for diversion.
- Clause 36:** identifies the levels of diversion options.
- Clause 37:** states the minimum standards applicable to diversion and diversion options.
- Clause 38:** states the consequences for breach of a diversion option.
- Clause 39:** empowers the Minister to make regulations to develop suitable diversion options.
- Clause 40:** makes provision for the Magistrate to stop the proceedings at an initial inquiry and address the matter as if it were commenced under the *Child Protection Act, 2023* in certain circumstances.

**Clause 41:** makes provision for referral of matters for trial and detention pending trial.

## PART VI COURT PROCEEDINGS

**Clause 42:** makes provision for the conduct of proceedings in relation to a child in court.<sup>1</sup>

**Clause 43:** states the standards applicable to the treatment of a child in court.

**Clause 44:** states that the responsibility of a child shall be proved by the prosecution beyond reasonable doubt.

**Clause 45:** sets out the standards applicable for the separation and joinder of trials involving child and adult.

**Clause 46:** sets out the time limits relating to conclusion of trials.

**Clause 47:** states that the Court may make an order for diversion where a child acknowledges responsibility for an alleged offence.

**Clause 48:** states the persons who may or may not be allowed to attend court proceedings involving a child.

**Clause 49:** prohibits the publication of information in proceedings related to a child which reveal the identity of the child or a witness appearing in such proceedings.

## PART VII SENTENCING OF A CHILD

**Clause 50:** states that a court may impose a sentence on a child that has been found guilty of committing an offence.

**Clause 51:** makes provision for the preparation of pre-sentence reports by probation officer in relation to a child found guilty of committing an offence.

**Clause 52:** identifies the purposes of sentencing a child found guilty of committing an offence.

**Clause 53:** empowers the court to impose a community based sentence.

**Clause 54:** empowers the court to impose a restorative justice sentence.

---

<sup>1</sup> Remove bold in cl. 42(1).



- Clause 55:** empowers the court to order that child to appear at a family group conference pursuant to the grant of restorative justice order under clause 54.
- Clause 56:** empowers the court to impose a sentence of correctional supervision for a period not exceeding 3 years.
- Clause 57:** empowers the court to impose a sentence involving a compulsory residential requirement in a secure residential facility, subject to clause 58 or a prison, subject to clause 59.
- Clause 58:** makes provision for the procedure for imposing a sentence to be detained in a secure residential facility.
- Clause 59:** makes provision for the procedure for imposing a sentence to be detained in a prison.
- Clause 60:** makes provision for the postponement or suspension of passing sentence.
- Clause 61:** empowers the court to impose a penalty *in lieu* of fine or imprisonment.
- Clause 62:** prohibits the imposition of a sentence of death, life imprisonment or flogging or whipping.
- Clause 63:** grants the power to give notice to show cause why the parent of the child or an appropriate adult should not pay the compensation.
- Clause 64:** makes provision for proceedings to show cause why the parent of the child or an appropriate adult should not pay the compensation.

#### PART VIII LEGAL REPRESENTATION

- Clause 65:** states that a child shall be provided with legal representation by the Government at all of the stages of any administrative or criminal proceedings.
- Clause 66:** sets out the standards to be complied with by an attorney-at-law in all of the stages of any administrative or criminal proceedings.

#### PART IX GENERAL PROVISIONS AS TO PROCEEDINGS IN COURT

- Clause 67:** makes provision for extension of the power to take depositions.

PART X  
SECURE RESIDENTIAL FACILITY

- Clause 68:** provides a definition of a “secure residential facility”.<sup>2</sup>
- Clause 69:** empowers the Minister to make an order to designate and cause lands or buildings designated as a secure residential facility.
- Clause 70:** makes provision for the Government Industrial School as a secure residential facility.
- Clause 71:** states the grounds for detention in a secure residential facility.
- Clause 72:** makes provision for the appointment of the Child Justice Board. The constitution of the Child Justice Board is set out in *the Fourth Schedule*.
- Clause 73:** states the functions of the Child Justice Board in having responsibility for the policy of the secure residential facility and giving directions to a Director of a secure residential facility.
- Clause 74:** makes provision of the appointment of a Director of a secure residential facility.
- Clause 75:** makes provision for the appointment of the staff of a secure residential facility in accordance with the *Public Service Act*, Cap. 29.
- Clause 76:** recognises that certain officers will be vested with the powers under the *Police Act*, Cap. 167 in order to convey a child to and from a secure residential facility or to return a child to a secure residential facility where the child has escaped a secure residential facility or refuses to return.
- Clause 77:** imposes an obligation of a Director of a secure residential facility to maintain records relating to a child detained in a secure residential facility.
- Clause 78:** empowers the Director of a secure residential facility to create programmes appropriate for a child detained in a secure residential facility.
- Clause 79:** makes provision for a child detained in a secure residential facility to receive medical or psychiatric treatment.
- Clause 80:** makes provision for a Director to apply to the Court for an order to transfer a child from one secure residential facility to another.

---

<sup>2</sup> Clause 68(b) delete the reference to section 70 and substitute section 79.

- Clause 81:** empowers the Director of a secure residential facility to declare a situation to be an emergency where there is the occurrence of fire, riot or disturbance, contagious disease or a natural disaster.
- Clause 82:** sets out the procedure for notification of a parent or appropriate adult in respect of a child and the Coroner and Police Serve of the death, injury or serious illness of a child detained in a secure residential facility.
- Clause 83:** states that the resources of a secure residential facility shall be such moneys as Parliament may provide for the purpose of operating the secure residential facility.
- Clause 84:** imposes on a child detained in a secure residential facility to comply with the rules of conduct and discipline as set out in the legislation and to participate in the programmes devised by the Director.
- Clause 85:** states the conduct that are considered to be infractions if committed by a child detained in a secure residential facility.
- Clause 86:** states the conduct that are considered to be acts of misconduct if committed by a child detained in a secure residential facility.
- Clause 87:** states the power of the Director to impose discipline on a child detained in a secure residential facility where that child has committed an infraction or an act of misconduct. It should be noted that certain forms of punishment are prohibited those being corporal punishment, severe or frightening measures.
- Clause 88:** sets out the procedure to be followed in the conduct of searches in relation to a child detained in a secure residential facility.
- Clause 89:** sets out the mechanisms to be used to maintain order in a secure residential facility.
- Clause 90:** establishes the grievance procedure to be followed where a child detained in a secure residential facility believes he has been treated an unreasonable, unjust, oppressive, improperly discriminatory, arbitrary, unfair, unduly harsh or inappropriate manner.
- Clause 91:** sets out the procedures to be followed in the discharge of a child from a secure residential facility.
- Clause 92:** empowers the Minister to approve the discharge of a child from a secure residential facility in certain circumstances.
- Clause 93:** makes provision for persons aggrieved by decisions made under Part X to appeal to a Judge in Chambers.

PART XI  
REINTEGRATION

- Clause 94:** establishes a Board to be known as the Reintegration Board. The constitution of the Reintegration Board is addressed in the *Fifth Schedule*.
- Clause 95:** sets out the functions of the Reintegration Board, the general responsibility of which is to consider application of a child detained in a secure residential facility or a prison for early release.
- Clause 96:** states the members of the Reintegration Board shall be paid such remuneration as the Minister determines.
- Clause 97:** states that the Reintegration Board may appoint and employ such other officers and employees as it deems necessary, on such terms and conditions as it thinks fit.
- Clause 98:** states that the expenses of the Reintegration Board shall be defrayed out of the moneys voted for the purpose by Parliament.
- Clause 99:** imposes a duty of confidentiality of the Reintegration Board or any person concerned with the Reintegration Board.
- Clause 100:** makes provision for the protection from suit of members of the Reintegration Board in the *bona fide* exercise of their duties and functions under the legislation.
- Clause 101:** states the parameters for eligibility for the grant of a reintegration order.
- Clause 102:** sets out the procedure to be followed in the application for a reintegration order.
- Clause 103:** states the procedures to be followed for the grant of a reintegration order.
- Clause 104:** makes provision for the content of a reintegration order.
- Clause 105:** states the conditions that have to be met for the revocation or suspension of a reintegration order.
- Clause 106:** states the conditions for forfeiture of reintegration.
- Clause 107:** sets out the procedure to be followed in the reapplication for a reintegration order.
- Clause 108:** empowers the Reintegration Board to make a reintegration continuing education order.

PART XII  
MISCELLANEOUS

- Clause 109:** gives the Minister the power to make regulations generally to give effect to this Act.
- Clause 110:** gives the Minister the power to amend by order the *First, Second, Third, Fourth* and *Fifth Schedules*.
- Clause 111:** is a transitional provision which makes provision for the continuation of actions first initiated under the *Juvenile Offenders Act, Cap. 138* to be dealt with, tried and determined in accordance with the proposed legislation and the imposition of penalties to be administered in accordance with the proposed legislation.
- Clause 112:** states that consequential amendments required to be done to the other enactments to facilitate the operation of the proposed legislation shall be addressed in the manner set out in the *Sixth Schedule*.
- Clause 113:** states that the *Juvenile Offenders Act, Cap. 138* and the *Reformatory and Industrial Schools Act, Cap. 169* are repealed.
- Clause 114:** states that the *Child Justice Act, 2023* shall come into operation on a date fixed by proclamation.



# **SUBMISSIONS**





PARLIAMENT OF BARBADOS  
(FIRST SESSION OF 2022-2027)

JOINT SELECT COMMITTEE (STANDING)  
ON THE SOCIAL SECTOR AND THE ENVIRONMENT

**CHILD PROTECTION BILL, 2023**  
**CHILD JUSTICE BILL, 2023**

**LIST OF WRITTEN SUBMISSIONS**

**Appended as C1 to C13**

- 1. Mr. Hutson Inniss, Executive Director, Family Faith Freedom Barbados**
- 2. Mr. Vincent Smith**
- 3. Ms. Norma Springer**
- 4. Operation Safe Space – Mrs. Marsha Hinds-Myrie and Miss Anya Lorde**
- 5. Mr. Kammie “Mac” Holder – Fathers 4 Justice Barbados**
- 6. Mr. Victor Hoppin (2)**
- 7. Chief Probation Officer (Ag.) Probation Department**
- 8. Dr. Veronica C. Evelyn**
- 9. Barbados Council for the Disabled (2)**
- 10. Mr. Junior Campbell, Intelek International**
- 11. Ms. Roseann Richards, Director, Child Care Board**
- 12. Barbados Bar Association**
- 13. Democratic Labour Party**



August 17, 2023

Clerk of Parliament  
Parliament of Barbados  
Parliament Buildings  
Trafalgar Street  
Bridgetown

Dear Sir/ Madam:

Family-Faith-Freedom, Barbados, wishes to avail itself of the opportunity to make a written submission to the Joint Select Committee in respect of the Child Protection Bill 2023 and the Child Justice Bill 2023.

Family-Faith-Freedom, Barbados is a registered Charity, No. 1447, that seeks to transform our society by promoting Biblical truth, fostering strong, natural families, building healthy communities and defending true freedom.

The proposed Child Protection Act in Section 3(1)(a) states that the purpose of the Act shall be to ensure compliance with:

- i) the United Nations Convention on the Rights of the Child;
- ii) the Universal Declaration of Human Rights; and
- iii) **all other international instruments to which Barbados is a party.**

The proposed Child Justice Act in Section 3 also states that the purpose of the Act shall be to ensure compliance with:

- a) the United Nations Convention on the Rights of the Child;
- b) the Universal Declaration of Human Rights;
- c) the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”);
- d) the United Nations Rules for the Protection of Juveniles Deprived of their Liberty; and
- e) the United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines).



# Family-Faith-Freedom

**BARBADOS**

Registered Charity: No. 1447

*Proclaiming Truth. Protecting Freedom.*



Family-Faith-Freedom, Barbados  
Baptist House  
Constitution Road  
St. Michael



(246) 426-2016



fffbarbados@gmail.com

We believe that, whereas the legislation would have been drafted with a view to ensuring compliance with the provisions of the Conventions referred to in the respective Acts, there is no need for this to be stated as a specific purpose in the respective Acts. These sections should therefore be removed as a precautionary measure because their inclusion commits the country to norms which may change, to its detriment and beyond its control.

We wish to bring to the attention of the Committee the various debates that have been ongoing in the United Kingdom, the United States and Canada with regard to the evolving concepts of Sexual Orientation and Gender Identity which have been categorized as human rights in some jurisdictions, and the trend towards incorporating these concepts into United Nations instruments, making the decisions not only of existing agreements binding on signatory countries, but of subsequent outcome agreements as well.

By expressly stating that the purpose of the new legislation is to ensure compliance with all international instruments to which Barbados is a party irrevocably binds Barbados to the provisions of all subsequent amendments made by external parties in respect of these agreements, whether or not the provisions are in keeping with the moral, social and cultural values and traditions which have always guided our society.

The Committee is asked to take note of Advisory Opinion OC-24/17, issued on November 24, 2017, by the Inter-American Court of Human Rights on the rights of people in same-sex relationships in terms of marriage and transgender people and their gender identity in response to a request for clarification raised by the Government of Costa Rica.

In its decision, the Court stated that Sexual Orientation and Gender Identity are categories protected by the American Convention on Human Rights (to which Barbados is a signatory), in which all States "must recognize and guarantee all the rights that are derived from a family bond between people of the same sex", including marriage. It requires governments to "guarantee access to all existing forms of legal domestic systems, including the right to marriage, to ensure the protection of all the rights of families formed by same-sex couples without discrimination".

Although this example does not relate specifically to children, it serves to reinforce the point that, by inclusion of Section 3 of the referenced Acts, Barbados in its legislation recognizes and accepts an obligation to implement all of the subsequent outcome decisions made in respect of instruments to which Barbados is a party, irrespective of the relevance to the local context, and the adverse impact these decisions may have on the social and cultural norms and traditions of our nation.

This obligation will ultimately have far-reaching implications in respect of evolving international “human rights” and standards relating to children that simply may not be appropriate for Barbados.

We are also very concerned about the various efforts to introduce Comprehensive Sexuality Education (CSE) in its various forms in several jurisdictions, resulting in severe conflict between legislators, school administrators and parents, often resulting in situations where parents have completely lost influence and control over the care and nurture of their children. We can provide several examples of current cases in the United Kingdom, Scotland, Canada and the United States.

We are certain that the members of the Joint Select Committee are aware of many of these situations since they deal specifically with children. As a result of this, we are flabbergasted that our representative to the UN Committee on the Rights of the Child, our Minister of Education, our Minister of People Empowerment and Elder Affairs and other officials who have direct responsibility for the care of our children repeatedly insist that we have no need for concern that these events will one day present in Barbados. The case of a male transgender student who insisted on wearing a female school uniform at Providence Secondary School in 2019 shows us that it is simply a matter of time before more serious issues follow.

We also wish to bring to the attention of the Committee other examples of UN agreements that include areas of great concern with regard to children’s rights which are framed within the context of CSE.

- i) The World Health Organization Human Reproduction Programme (WHO HRP) publication *Sexual Health, Human Rights and the Law* states that countries are required to guarantee adolescents’ (ages 10 to 19) rights to privacy and confidentiality by providing sexual and reproductive health services without parental consent on the basis of their evolving capacities. (WHO HRP Page 20 - 3.4.1)

The WHO HRP also advocates that for people whose deeply felt gender does not correspond to the sex assigned at birth, access to hormonal treatment or gender reassignment surgery, or other treatment, may be needed for the protection of their health. (WHO HRP Pg 14 - 4.2)

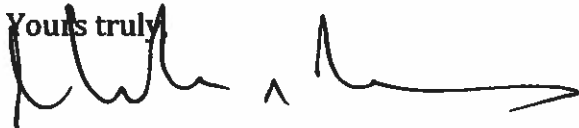
- ii) The Caribbean Protocol of the proposed Post Cotonou Agreement (yet to be signed) requires the signatories to ensure that the ‘gender perspective’ is systematically mainstreamed across all policies, including through the creation and consolidation of legal frameworks. (EU-ACP Caribbean Protocol Article 48.1)

This gender perspective is one that promotes the concept of gender fluidity and teaches children that they have the right to determine their gender.

- iii) The International Conference on Population Development's Programme of Action and the UN WOMEN's Beijing Declaration and Platform for Action, include provision for abortion on demand, prostitution rights, LGBTQ rights (including the right to same sex marriage) and sexual rights for children.
- iv) The UNESCO Technical Guidance on Sexuality Education promotes CSE as contributing to gender equality by building awareness of the centrality and diversity of gender in people's lives, examining gender norms shaped by cultural, social and biological differences and similarities. The integration of a gender perspective throughout CSE curricula is integral to the effectiveness of CSE programmes. (Chapter 2.1)

The central point being made here is that the inclusion of the provisions made in Section 3 of the referenced Acts obligates Barbados to accept and include the provisions of all UN and other instruments, including those which are not in the interest of Barbadian children and the general population.

We trust that our submission will be given serious consideration. We would also welcome the opportunity of a ten (10)- minute presentation to the Committee.

Yours truly  


**FAMILY-FAITH-FREEDOM, BARBADOS**  
Hutson Inniss  
Executive Director

Enterprize,  
Christ Church.

18/8/2023

c/o Clerk of Parliament,  
Parliament of Barbados,  
Parliament Buildings,  
Trafalgar Street,  
Bridgetown.

**RE: Submission to the Joint Select Committee on the Child Protection Bill, 2023.**

Dear Sir/Madam,

Title of submission: **Gender Affirming Care is medical abuse.**

The child protection Bill lacks a crucial area of protection. I propose that **“gender-affirming care” should not be administered to a person under 18 years of age and be an addition to the Bill 2023.**

- "Gender-affirming care" shall be defined as any medical treatment or procedure that is intended to change a person's biological sex, i.e., their primary and secondary sexual characteristics whether through drugs, surgery or any other means.
- It would make it a felony for a doctor to prescribe puberty blockers or hormones to a minor or to perform sexual reassignment surgery on a minor under the age of 18 for the purpose of gender-affirming care.

We can all agree that our most important responsibility is to protect our children. We should agree that children do not have the physical, emotional, or mental capacity to make life-altering decisions. We should also agree that it is never okay to chemically castrate, sterilize, mutilate, or butcher a child.

This change to the Bill is of the utmost importance. This change to the bill is necessary because children are being led down a path of gender confusion and identity crisis which is exploited and monetized by medical professionals. Sex replacement surgery is a major surgery that should not be taken lightly. Sex replacement surgery is not needed to affirm a person's gender identity.

First, children are put on chemical castration drugs. Then, they are given cross-sex hormones, which often have irreversible and permanent effects. Finally, before the age of 18, many of these children will undergo surgery such as double mastectomies, which will alter their bodies and their lives forever. Children are being coerced into decisions that they are not equipped to make in pursuit of a goal that they cannot attain. A girl who gets a double

50

mastectomy is no closer to being a boy after the procedure than she was before. She is still a girl and will always be a girl, just now a mutilated and damaged one.

This is happening across the Globe and international organisations that support transgenderism will push for countries to enact such laws within the countries that they have agreements with.

We all recognise that minors lack the maturity and discernment required to make these choices yet when it comes to irreversible life-altering medical interventions, some of these same people discover a newfound confidence in the responsible decision-making powers of children. This position is not consistent or scientifically defensible. We also recognise by our own laws that minors cannot make certain decisions and therefore allow them to make life-long body-altering ones which many admit was a mistake and that they were too young to know better.

- Sex: It is important to note that the age of consent in Barbados is 16 years old. This means that it is illegal for an adult to have sexual relations with a minor under the age of 16.
- Firearms: You must be at least 21 years old to purchase a firearm in Barbados. You must also obtain a firearm license from the Royal Barbados Police Force.
- Alcohol: The legal drinking age in Barbados is 18 years old. It is illegal for anyone under the age of 18 to purchase, possess, or consume alcohol.
- Cigarettes: The legal smoking age in Barbados is 18 years old. It is illegal for anyone under the age of 18 to purchase, possess, or smoke cigarettes.
- Driver's license: You must be 16 years old to acquire a driver's license and we can go on.

One of those basic truths is that a child who is confused about her identity needs guidance and love and clarity. She does not need hormone injections and scalpels. The child needs to be protected from medical professionals and any person who wishes to exploit the child's confusion for their own gain. That's why we need this amendment to the Bill.

Vincent Smith



## CHILD PROTECTION AND CHILD JUSTICE BILLS 2023

### DEFINITIONS OF THE CHILD

- The Child Justice Bill reduces the age of criminal responsibility from “under 14 years” to 12 years and 1 day.
- The Child Protection Bill has special clauses for “a child under 12 years old.” BIG BIG problem. Why? Too many child ages in Barbados. See table on end page.
- Neither Bill provides for the State to assume GREATER ROLE IN POSITIVE CHILD REARING. The state must decide between a re-invented school education system and an expanded prison facility.

### OVERVIEW

Children are the structural and cultural future of our homeland and we must ask ourselves, “What futures are we creating with these Bills?”. Will these Bills safeguard our children and help them towards the best outcomes for their lives? What and where is the social policy for these Bills? How will they affect society in the short, medium and long-term? Do we really want to rob black bodies of opportunities via criminal records? What percentage of the population do we want to exclude from society and economy via the criminal label?

Our children are NOT PROBLEMS TO BE SOLVED, and until we abandon the English Victorian approaches, the slavery-plantation systems and establish our own philosophy for child rearing, these cut and paste documents will not give our children rights, justice nor protection.

Are troubled children and their parents sitting with this Joint Select Committee?

### SOCIETY

It is the role of home and school to give children the foundations, confidence and skills they need to succeed as adults, especially the ability to make informed decisions and to take responsibility for their choices.

Sadly, as the CXC certification results show, as UWI quality reviews conclude, as employers complain, and as the populace observes, the Barbadian youth, within the standard normal distribution, whether 16, 18, 21 or 25 years old is:

- unable to research a subject and demonstrate knowledge acquisition,
- challenged to follow simple directions yet unable to act without direction,
- inarticulate and lacks confidence,
- unable to recognize when a decision needs to be made,
- are unable to consider possibilities and justify an option,
- unable to think through a problem and posit solutions,

The conclusion, therefore, is that at 16 years when we pelt them outta school, the vast majority of children in Barbados cannot think effectively enough to make decisions and recognize the consequences of those decisions without additional support. Unless these Bills are accompanied by **Strategic and Implementation Plans** for actually safeguarding our children, they are only job creation vehicles for these new statutory bodies. Wave your hand if you know of any safe state institutions for our children?



Our children need much more support than we now offer, and these Bills are not addressing the underlying causes of our children's distress but are penalising them for the socio-economic conditions of their home environment.

We are punishing our children for our failures with heavy policing. Having failed to effectively educate our children and create opportunities for their productivity we invest in policing and security.

Who is benefiting from this security investment as we happily learn and employ the methodologies of racist policing systems. Go spend a week or two travelling the communities in Jamaica and see the future Barbados.

We continue to create high density housing and schools, facilitate a school transport system that is worse than that for livestock, take away windows and access to the sea, and then punish ourselves for wanting a bit more elbow room.

We have had the Harold Hoyte Commission on Crime and Violence and the Richard Carter Report on "Violence in Schools". What are the outcomes and their evaluations?

Our youth are sitting in their bedrooms and "on the block" with all sorts of innovations and creations, and no idea how to get them to market. Civil servants with a guaranteed monthly salary, sink or swim, cannot be put in charge of these fragile resources.

#### **THE SOCIAL ENVIRONMENT OF OUR CHILDREN**

- Barbados is not a disciplined society – ZR culture, queuing, garbage, tardiness, noise pollution.
- Parenting is the most important job in the economy, yet there is neither academic nor skills training for this job.
- Most parents assume their role by accident such that the most important job/career in the economy is being undertaken by ill-educated, unskilled, untrained and un-empowered persons. When that role is transferred to the day-care centres, underpaid is added to the profile.
- Parents and family are dysfunctional and are failing to adequately socialise the child.
- The village and the church are no longer raising the child. Replaced by ZR and social media.
- Children's socialization begins in the day-care centres where feelings of abandonment, anger, frustration, selfishness first develop. Most children receive their first experience of violence in the day-care centre, where the command "no" is often accompanied by a slap.
- Most children are from high density homes where there is an excess of noise that impacts brain development and personal space is limited. High density school environments also limit personal space creating a constant need "for escape" within the child. An inclination to "touchousness" develops.
- Television, the internet and mobile phones are not leaving the planet. How does society adapt to manage their influence?
- Sexuality is a fact of life. It cannot be stopped. The issue for society is the conflict between biology-society-law and how to teach children to manage their emerging sexuality. Homosexuality has always been a reality of life – accept it and move on.
- Sexual and other offenses against the child must NOT go unpunished. What recourse for the child when "parents no longer wish to proceed with the case"? The Bills are silent.

#### **FRAGMENTED STATE SYSTEMS**

Care of the child:

- Nursery care – Child Care Board, Ministry of Peoples Empowerment and *Elder Affairs*
- General Welfare – Child Care Board, Ministry of Peoples Empowerment
- Delinquency – Child Care Board, Ministry of Peoples Empowerment
- Delinquency – Probation Department, Ministry of Home Affairs
- Criminality – Industrial Schools, Ministry of Home Affairs
- Education – Ministry of Education, etc.
- Sports – Ministry of Sports, etc
- **Child Justice Board – Bill silent on Ministry**
- **Child Protection Authority – Bill silent**

We need one institution to care for our children and youth – all aspects of their care as the child cannot receive the education on offer if it does not meet his needs or there are barriers to access.

Education of the child:

- A 16-year-old is of no economic value to self nor country.
- Our children must remain in structured education until 18. Not to be forced fed books and 'schooled' but to be educated - learning to find themselves, building skills and knowledge.
- All the piece-meal and expensive technical, vocational programmes and youth development projects must be integrated into the school curricula, so the concept of school widens from the narrow definition.
- Back in the 1990s, it was calculated that a year at Eton was cheaper than a year at Glendairy. That means every child in Barbados could have had an elite education. What is the equivalent now?
- The child must be placed at the centre of the education system, not the teacher.
- Too many teachers and not enough facilitators, occupation therapist, sociologists and other support specialists our children need to mitigate their domestic circumstances.

**CHILD DIGNITY**

- In 1993 the Barbados High Court approved the constitutionality of statutory provisions for beating children in schools. While it may be theorised that Caribbean discipline is a legacy of slavery out of which emotional bonding was avoided; there is no justification for continuing this practice of "being cruel to be kind" to our children in the 21<sup>st</sup> century.
- Is child beating compatible with evolving standards of decency? Which economically developed country, which socially advanced white society subjects its future captains of industry, political leaders and designers of society to such inhuman and degrading treatment? How can a Barbadian child stand equal to a Swedish child in the globalised world?
- State-sponsored direct violence is constitutionally defended by the Government of Barbados, and the people of Barbados loudly proclaim that inmates of the juvenile correction centres, the penal institution, the psychiatric hospital and the geriatric institutions have lost all claims to their human rights and should not expect to be treated with dignity and respect.

**NATURAL PARENT**

- The Bills refer to parent, natural parent, natural mother, natural father.
- While 70 to 80 percent of Barbadian children are born outside of marriage it is impossible for them to be fatherless, so the system of birth registration must be modified for every child to

have a registered father. **NOTE: The child's passport and identification card can be redesigned to include names of both parents.**

- During the 1980's Barbados undertook legislative reform to eradicate the concept of "legitimate" and "illegitimate" birth and made provision for all children to inherit from their parents' estates.
- However, under the patriarchal legal system a child born outside of marriage continues to experience discrimination because the father's name can be placed on the birth certificate only if he physically presents himself to the court at the time of birth registration, or, with the consent of the mother apply for a change of name at a later date.
- A well-intentioned father who by circumstances is lying at the injury or psychiatric hospital, enjoying the hospitality of Dodds or is out of the island cannot present himself and the child is punished.
- Every child has a father, by name or by number, and the law should mandate the father be named at birth registration. Well-intentioned fathers who cannot be physically present at birth registration can submit a declaration, and for the not-so-well-intentioned, a system of notification and period for objection, based on scientific evidence, can be implemented.
- A co-primary objective of mandatory father registration would be to ground fathers in co-responsibility for their children and to be co-accountable to the state for their condition.
- In the juvenile courts, the constant laments of mothers are their inability to cope, that they have exhausted every avenue 'to raise a proper child' and that the fathers do not participate in the children's development.
- Now a creative magistrate can sentence a child to the father's custody instead of the correction centre, for the same period, with an order to ensure measurable behaviour changes, failing which the father will be fined or confined.
- Oh! Would men not be more careful with their sperm? Oh! What a better Barbados this would be.

<b>AGE OF MAJORITY (kindly prepared by UWI Law Student)</b>	
<b>LAW</b>	<b>AGE</b>
The Constitution	Does not define "child". Uses the word "person".
Representation of People Act	At 18
Adoption of Children Act: Consent	Under 18 Silent
Adoption of Children Bill	Recommends consent of child if over 14
Education Act	Compulsory from 5 years 9 months to 15
Access to medical services	No general legislation relating to medical treatment by persons under 18
Access to the Justice System	A child (undefined) cannot sue in own name at common law but must proceed by next friend. Implications: a child cannot sue to recover monies owed, especially monies for which he has worked.
Juveniles Offenders Act: Definitions	"Child" defined as under 14 "Young persons" defined as 14 but under 17

Juveniles Offenders Act: Criminal Responsibility	10
Juveniles Offenders Act: Corporal Punishment Capital Punishment	Under 14  18 at time crime is committed.
Juvenile Offenders Act: Commitment to Prison	A "child" or "young person" should not be detained in prison while on remand.  Section 13 provides that a "person" under 16 is not to be sentenced to imprisonment.
Juvenile Offenders Act: Commitment to Prison	Section 7 prevents a "child" or "young person" while being detained from associating with an adult charged with an offence
Age of Consent Act:	16
Age of Medical Consent:	18
Criminal Law (Offences) Act: Sexual consent (incest)	Section 67 makes it an offence for a 16-year old female who "with consent permits" her grandfather, father, brother to have carnal knowledge with her. Both the girl and the accused may be punished by 7 years imprisonment.  Under 16, the girl is not held liable and is unable to give consent.
Criminal Law (Offences) Act	Section 70 provides for 5 years imprisonment to "unlawfully and carnally know" any girl under 12.  Section 69 makes punishable as a misdemeanour with a 2-year prison sentence to "unlawfully and carnally know" any girl "of or above the age of 12 and under the age of 13".  Defence may show reasonable cause to believe girl was of or above 13 years.
Marriage Act:	Age of marriage: 18 Girl 16 without parental consent. Pregnant girls under 14 may apply to the court for permission to marry a person older than 16 or under 16 only if he is the father of the child.
Employment of Women, Young Persons and Children Act: Prohibits employment of "child" in any "industrial undertaking" or on ships.	"Child" defined as under 14 "Young person" defined as between 14 and 16
Factories Act:	"Child" defined as under 14 "Young person" defined as between 14 and 16
Ability to Contract governed by The Common Law and the Infants Act	At common law, an infant was not a person. A contract made by minor is voidable at his option either (a) valid unless repudiated at age of majority – 18 or (b) not binding unless ratified at age of majority – 18.

Title to Property:	A minor cannot own real estate or be the executor to a will or administrator of the estate of his parents.
--------------------	--

**Norma Springer**  
[normaspringer@gmail.com](mailto:normaspringer@gmail.com)  
424-1608


Operation Safe Space

Comments on The Child Protection Bill and The Child Justice Bill

August, 2023

For

Joint Select Committee (Standing) of Parliament



Operation Safe Space (OSS) is generally satisfied with the two bills which seek to address the archaic structure in place for legislating the specific issues relating to children. OSS is also supportive of separating children in need of care from children in conflict with the law as the UNICEF best practice framework. Notwithstanding, the major concern with these two pieces of legislation overall is that they will not do much to change the experience of service users who come into contact with them. Other major concerns are the continued layering of bureaucracy in treating to the needs of children, and government officials remaining outside of accountability. Our focus is not whether the laws are correctly drafted (there are some grammatical errors and cumbersome sections), our focus is on whether we can help parents to navigate the SYSTEM that these laws will give rise to and at that level we recognize that some of the existing issues remain.

### Who is the Law for?

Although there are children in need of care and in conflict with the law across the socioeconomic groups on the Island of Barbados, those that come into contact with the law and government services are disproportionately working class. In other socioeconomic groups, parents or relatives pay to provide services for children in conflict with the law and children in need of care are hidden because their needs occur in gated communities or behind high walls and facades. The working class parents and children who present for services as will be outlined in both bills often have a lack of knowledge about their rights and how systems function. Service providers interact with members of the working class in disparaging ways and this contributes to many of the rights infringements and atrocities that are perpetuated against children in conflict with the law and in need of care. It is important to understand the socioeconomic disparity with the two proposed laws because by delivery and historical and cultural norms they can intentionally or unintentionally continue to discriminate even though the intention is for them to improve the current situation.

### Bureaucracy

Access to services for children in need of care and children in conflict with the law is severely impacted by gaps and bureaucracy in services. The challenge with bureaucracy manifests in two ways: First, there are the attitudes of the officers who function in the bureaucracy and second the inability of the state to provide adequate resources to make bureaucracies function in timely ways. The Child Protection Bill proposes to rename the Child Care Board. However the culture of the current Board is longstanding and pervasive. If we are honest with ourselves, sometimes the very officers entrusted with the care and protection of children do harm. Where this occurs, both acts are silent of a process of complaint and accountability measures to change the behaviour of officers. There are fines for the public but none for the officers who will be entrusted with effecting the laws. The recent experience of the Government Industrial School has revealed that whistle blower legislation that protects board actors and other stakeholders as they carry out their duties are important. If board members or other stakeholders who raise alarms about issues within the system can just be dismissed then we cannot ensure accountability in the system.



## Resources

Barbados is a small open economy where care work is always seen as non-productive industry. During austerity these sectors are the first ones to be cut or decreased. Building flat and sustainable models for addressing children in need of care and in conflict with the law is important. These two laws seem to be carry throughs on the traditional approaches to the issues and experience teaches is that this policy model develops gaps where clients fall through the system and are disadvantaged.

Given our concerns we would recommend a complete procedural manual to accompany both pieces of legislation as well as expansions that address government and government officials.



Mac Holder <macholder@yahoo.com>

8/23/2023 7:04 AM

## Child Protection & Child Justice Bill Submission

To parliamentbarbados@caribsurf.com <parliamentbarbados@caribsurf.com>

I truly appreciate this opportunity to contribute to the framing of the captioned bill. The UN Convention on the Rights of the Child Charter embodies 41 articles. During the last nine years, I have canvassed and found that the below items are of major concern to non-custodial Barbadian parents, mainly fathers, and are also of personal concern to me.

### ARTICLE 3: BEST INTERESTS OF THE CHILD

Children's interests should be at the forefront of all decisions that affect them in every situation: adoption, detention, custody disputes between parents - everything.

**If we truly are interested, in the best interest of the child, mediation must be foremost, and social inquiry reports must be done before any maintenance or access matter goes to court. Courts, by their mere adversarial nature, are not the best place for these highly emotional matters. Only after mediation fails, should matters go before the courts for determination.**

**Benefit: Courts would no longer be used as weapons by custodial parents, avoiding emotional trauma for the children, faster dispensation of matters in a more cordial setting, and de-clogging of civil courts.**

### ARTICLE 4: IMPLEMENTATION OF RIGHTS

When States ratify international treaties, they agree to take measures to put them into practice. For children, this means their government must make sure the country they live in and its institutions provide them with the means to truly become rights holders. This involves reforming laws, providing resources and services, monitoring how children are affected, and developing institutions that promote children's rights.

**Very often, in our covertly gynocentric society, all rights seem to be vested in mothers, who are often the custodial parents. It should be mandatory, that the children never be denied the opportunity for a non-custodial parent to participate in their school life. Currently, the Ministry of Education, without any legal standing, has issued instructions that no parent whose name is not registered at the school is entitled to access to child or school records. Depriving the said child of having a non-custodial parent participate in PTAs, Sports Days, Form Level Meetings, graduations, or even having access to School Report Cards is nefarious and emotional harming.**

**It is therefore time-consuming, and frustrating for many non-custodial parents, who are often fathers, to seek a court date, which sometimes takes years before the matter can be heard.**

**Solution: Make it mandatory that all non-custodial parents names be included on the school registration form unless ordered not to do so by a court. It is also worthwhile to**

note, that thugs never have access to their children as an issue, and in early July 2023, a non-custodial father found himself before the courts over the denial of a custodial parent's refusal to allow him the opportunity to take a picture at his daughter's graduation.

## **ARTICLE 8: PRESERVATION OF IDENTITY**

This article has many applications, from helping children who have been displaced to re-establish contact with their family, to assisting children in care to trace aspects of their identity they are too young to remember. In essence, it protects the personal characteristics, relationships and histories that make children who they are.

## **ARTICLE 9: SEPARATION FROM PARENTS**

Children should be able to live with and have contact with their parents, unless certain factors indicate that the State should intervene, such as abuse or because a child's parents have separated. This covers both potential long term separation (e.g. a child being taken into care) and short term separation (e.g. if a child spends some time in hospital). All decisions to separate children from their parents must be made by the competent authorities.

## **ARTICLE 27: RIGHT TO AN ADEQUATE STANDARD OF LIVING**

Children's development depends on their ability to enjoy a decent standard of living. Of course this means they should have adequate clothing, nutrition, and housing. But many other elements are needed to secure children's wellbeing and inclusion in society - not just the ability to cover basic needs. These include having sufficient time to play, the opportunity to access the internet and the enjoyment of a clean environment.

On May 25, 2019, the UN recognized Parental Alienation Syndrome in children as an emotional disease that can lead to PTSD and dysfunctional behavior in adulthood. According to research supporting the findings, girl children who are deprived of a relationship with a non-custodial father find it hard to navigate relationships with males as adults, are prone to accepting abuse as love, and very often date very old men to seek the love they never got from an absent father.

Problem: Current visitation of every other weekend or 48 days a year does not allow for a child to have proper nurturing relationships with a non-custodial parent. Unless not accepted by the non-custodial parent due to work or social activity; shared parenting must replace co-parenting. An access order of 96 hours monthly or 48 days out of 365 days is emotional abuse of a child and does not adequately meet their social needs for access to bond with a non-custodial parent. Children's rights to access a non-custodial parent must trump those of any parent, once no danger to the child exists.

A clogged court system does not help, but trained mediators can remedy this injustice to children where child justice is delayed for years. Extra-curricular activity access by the child with a non-custodial parent is an inalienable right which may only be accessible during week with liberal access under **Shared Parenting**

## **ARTICLE 12: RIGHT TO BE HEARD**

Children have the right to be heard in all matters affecting them - this is a prerequisite for guaranteeing all their other rights. In most societies, though, decisions are taken which have an impact on children's lives - in court, at home and at school and in politics - in which they are not consulted when adults would be. The arguments used to deny children a voice today are the same as those used to suppress women's views in the past (and present in some cases).

### ARTICLE 13: FREEDOM OF EXPRESSION

Children have the same right to free expression as adults, but it is not always respected. The degree to which it is acts as a gauge of how children are perceived as human rights holders in a given society. If children are not able to express their opinions and feelings, how can they describe the ways in which their rights are respected or infringed, and learn to stand up for the rights of others? Communities evolve through the exchange of ideas and shared knowledge; without it, societies would become stagnant with only the views of the most powerful on display.

### ARTICLE 16: RIGHT TO PRIVACY

Children are particularly vulnerable to breaches of their privacy because of the range of situations in which adults have power over them. Some children are more likely to experience this than others as a result of their living arrangements. Children living in institutions, for example, may have their communications intercepted and may be subject to searches of their personal belongings. Children's use of the internet adds another dimension to this right.

The age limit at which children's views on access and maintenance issues are not heard until a certain age needs to be changed. A Judge or Magistrate should, within closed court, hear the evidence of children from age 6 on matters affecting their wellbeing in the presence of a social worker or child psychologist. The practice of attorneys liming in court who have nothing to do with the matter has been my experience and needs to be fixed to protect the privacy of children and parents. Children in 2023 are more aware and smarter, thus they must be heard.

### ARTICLE 18: PARENTAL RESPONSIBILITIES

Parents play a central guiding role in a child's life. But while parents have a duty to care and provide for their children, they do not have a right to raise or treat them however they see fit; a child's best interests should be their primary concern. This duty requires support from the State - whether in the form of child-care for parents in paid work or other provisions.

**Suggestion:** Notwithstanding the need for financial support, and the fact that parents may have varying levels of income, **Support In Kind** must become a legally accepted form of Child Maintenance.

During the pandemic, many non-custodial parents found themselves unemployed, and again, most often custody is with mothers. Many members of extended families chipped in to provide the groceries, clothing, toiletries, bus fare, etc., and the dollar value often times is more than what the courts orders. However, many men were told bluntly by custodial parents that they only wanted court ordered maintenance. Whose interest was served with such an attitude? Certainly not that of the child. One father told me he had to sell a little thing, which meant drugs, to keep the Marshals at bay. Again, the bottleneck in the court system is always an issue with matters getting dates 9 to 12 months away or matters getting constantly rescheduled.

## **ARTICLE 40: ADMINISTRATION OF JUVENILE JUSTICE**

The criminal justice systems of most countries do not work. The current method of criminalising children who break the law fails them, their families, communities and the rest of society, and does nothing to reduce crime. We need to stop making children criminals, and juvenile justice should focus on rehabilitation rather than retribution and punishment.

Of concern is that of how the Justice System makes a mockery of " In the best interest of the Child."

On behalf of the many fathers, and I who feel let down by what many may not admit is covert gynocentrism, I wish that matters of access and maintenance be removed from the adversarial court system and all sent to a mediation board for settlement. My own experience after applying with an urgent affidavit to allow my daughter, whom I have not heard or seen since 2020, two days at Christmas 2023 or on her birthday, March 3rd, 2023, with her father, was determined by the registrar in late March 2023 as not urgent. Who would not feel hurt, angry then, only to be insulted with a date in April 2023 when all the courts were closed for training. If that is not emotional abuse or a miscarriage of justice, I cannot fathom what is.

I know men who are waiting to get to court on matters that can be best done via mediation, but the inability of courts to enforce mediation for matters best known to them continues not to be in the best interest of children.

Let me also inform this committee that most lawyers are now asking for a \$10,000 deposit as a retainer for access and maintenance cases. Sadly, it's the same lawyers who take instructions and give instructions who make these matters even more contentious while earning fees in these protracted matters at the expense of vulnerable children. Let's truly have justice for our children!

Kammie Holder  
Fathers 4 Justice Barbados  
Affiliate Of Fathers 4 Justice UK

Dear Sir,

Please take what I say as no more than constructive criticism. Offending behaviour in young people is at its peak during the largely unstable period of adolescence. This is a time when the individual is no longer a child but yet not an adult. This uncertainty brings emotional and behavioural problems into the lives of many, with wrong decision making and impulsiveness at times. Passion, feelings, excitement, indifference and more self-harming actions coming to the fore. Logic, and not giving much thought to the consequences on self and others not seeing the light of day.

The policy of DIVERSION from the criminal justice system take these psychosocial, emotional factors into account, so allowing a young person to address his/her offending behaviour and its cause(s) without having to enter the criminal justice system. When the offence is not of a too serious nature. Convictions or findings of guilt, come loaded with stigma and at times non acceptance of the individual in society. Having been labelled as a criminal the young mind is at risk of acting out the life of a criminal. Further with it being necessary to move around the world in the search for employment, a conviction can seriously effect life chances, closing the door to many opportunities. The impulsiveness of youthfulness being a life sentence.

Areas of Concern:

In respect of diversion, there is no break from the past. The word is mentioned but it has not been put into effect. The young offender will come into contact with the Police and as usual will GO BEFORE A MAGISTRATE.

He/she is now firmly in the criminal justice system. The MAGISTRATE, having made an assessment of the seriousness of the offence and other pertinent details surrounding the young person will DETERMINE whether the matter can best be dealt with before the newly formed Board. Should the COURT so decide, the Order will be so made.

In no way can this be a diversion from the criminal justice system. It is purely a DEVIATION from the Magistrate

Court for the purpose of the Board determining what level of intervention in terms of a behavioural change programme and its duration is appropriate. Will a record be kept of this appearance before the Board? I am sure that before the Magistrate will be kept. A record for life!! This defeats the purpose of diversion.

The cart has been placed before the horse. A true policy of diversion will see AN APPEARANCE BEING MADE FIRST BEFORE THE BOARD. This would have been made up of Probation and Social Welfare Officers, a psychologist and a

couple lay members of the public with appropriate experience. Sitting with them would have been an experienced

Attorney at Law. They would have been charged with the responsibility of determining the level of intervention, its

duration and if appropriate the following up period, working with the family supportively. The matter would have

been referred to the Magistrate only where the Board have come to the conclusion taking into account all the

circumstances that it would best be determined in that setting. The last resort not the first as proposed.

Further as it stands the Board with the Chief Prison Officer or his nominee, will be telling Probation Officers, people qualified in their area of work, what to do in terms of intervention into the life of a young person. That is something they do day in day out. In presentence reports to the Courts they set out clearly the programme and its duration, where they have assessed that a person can benefit from their supervision. What then is the purpose of the Board in its present form other than creating another clog in the machinery of justice.

I'll conclude by saying the Bills are highly legalistic, an Attorney's dream and unnecessarily bureaucratic, while being very short on social work observations and experiences. Further with there being no philosophical or psychological principles running through them they give the appearance of a legal tick box approach. Sorry no offence is intended as I have great respect for the considerable work 'put in' by the drafters. Quite a feat. How much advice was sought and? taken from professionals in the field?

Thanking you for the opportunity to make this submission

Victor D Hoppin



Victor Hoppin <vdholligan@yahoo.co.uk>

8/24/2023 4:55 AM

## Submission --- The Child Protection and Child Justice Bills, 2023 , 'Length of Counselling, insufficient,

To parliamentbarbados@caribsurf.com Copy wilfred.abrahams@barbados.gov.bb

To The Clerk Of Parliament for the benefit of the Committee.

Sir,

Anti- social and offending behaviour by young people are deeply rooted in many social and economic deprivations. This fact has been recognised by researchers and professionals from around the world. As such it follows that they are socially and economically transmitted. We, young and old, being products of the society we live in. Invariably the home is the place which gives structure, shape, to the young people's behaviour, that home environment having been influenced by society.

The genesis of such behaviour can be found in deprivations at all levels. In the home, could be found, incorrect use of language of the 'put down sort' , harsh, uncaring methods of punishment, absence of the language of love and acts of appreciation, endemic low expectations, motivating, encouraging, supportive environment limited or non existent, a serious blurring of the line between right and wrong and the not to be seen or felt relationships built on respect ,love and acceptance of rights and responsibilities., etc. . There is the inescapable fact of financial hardships and lack of well paying employment which offers the hope of advancement in terms of home ownership etc for the low income group.

Such serious problems within the 'family' cannot be dealt with, within the time frame as set out in the Acts. The outcome desired cannot be achieved within the three and six months as proposed., when addressing behaviour in a family context. The 'change' process starts with the professional worker and the client(s) developing a good working relationship. This takes time as it is built on respect, trust, confidentiality with agreed objectives. The four or five stages for meaningful change then follows, the most difficult of which is to get the clients to accept that they carry some responsibility for their situation and to move forward positively in a way that is empowering. In this acquiring the skill of motivating self/ selves, being of great importance.

Further, good , effective, intervention requires' supportive follow up work', where is the provision for this ? I am afraid far more is required in respect of addressing offending behaviour by young people, which is not context free.

Thanking you

Victor D Hoppin LLB (Hons) Dip SW, MA Social Science.





THE PROBATION DEPARTMENT  
#33 Roebuck Street  
BRIDGETOWN  
E-Mail: probation.department@barbados.gov.bb



Our Ref:

Chief Probation Officer – 536-0401  
PABX – 536-0400  
Fax - 228-4521

The Clerk of Parliament  
Parliament of Barbados  
Parliament Building  
Trafalgar Street  
Bridgetown

August 15, 2023

Dear Madam,

**Re: Submission Child Justice Bill, 2023, Child Protection Bill, 2023**

Child Justice Bill 2023 - The Barbados Probation Service was one of the key stakeholder agencies engaged in the process of providing input into the draft legislation and implementation strategy for the Child Justice Bill. During the activity the Department would have noted any perceived challenges and drawn them to the attention of the consultant which resulted in the necessary amendments. The Department supports the composition of the Bill.

Child Protection Bill 2023 – The Barbados Probation Service engaged with the consultants responsible for the draft legislation in addition to providing comments and seeking points of clarification. As a result of this process the Department does not have any challenges with the Bill in its current form.

for Denise Agard  
Chief Probation Officer (Ag.)



# Submission to the Joint Select Committee (standing) on the Child Protection Bill, 2023

## CHILD PROTECTION AND THE PREVAILING SOCIO-POLITICAL CLIMATE

*The Child Protection Bill, 2023* cannot be examined in a vacuum. It forms part of the re-visioning and reshaping of Barbados as a new republic and has been developed to “ensure compliance with international instruments”<sup>1</sup>. Therefore, it is best understood with reference to the local and wider social and political context in which it is framed. The concept of child protection also needs to be considered.

Why do children need protection? How should parents and those who act *in loco parentis* collaborate to protect children? From what or from whom should they be protected, and to what end? What is the aim of child protection?

To protect is to shield from harm or injury; to guard; to defend. Children need protection because at this life stage, their powers of reasoning and emotional self-control are still developing. During this introductory period to life, the aim is to safeguard their wellbeing and to help them appreciate themselves, their friends, family and their society to the extent that they become well-adjusted productive citizens. Childhood is, ideally, the most carefree period of life and a time in which significant adults help the growing human being to develop attitudes, behaviours and a mindset that will predispose them to engage positively with life. Child protection may therefore be understood as those pre-emptive, directional or corrective measures which are consciously or sub-consciously adopted to protect the child from persons, situations or influences that threaten the development of a positive mindset and pro-social attitudes and behaviours. At times, children need to be protected from themselves and regrettably, even from their own parents or the State.

There is much consensus as to matters of child protection. In previous centuries, the fact that the brain does not fully develop until the mid-20’s was a strong guiding principle in deciding on matters of childcare, education, child justice and child protection. This is now changing and, in some countries, including Barbados, a set of new and emerging issues regarding human sexuality constitute an additional and often conflicting guiding principle. The situation is such that, depending on one’s views regarding human sexuality, the very same childcare issue may be assessed as:

- ‘protection’ or ‘abuse’
- ‘cruelty’ or ‘care’
- ‘care and guidance’ or ‘neglect and abuse’
- ‘care and protection’ or ‘violation of parental rights’
- ‘harm’ or ‘health’
- ‘harm’ or ‘happiness’

The Child Protection Bill 2023 cannot therefore be examined without reference to the local and international socio-political climate in which it has been framed and in which it will take effect. Indeed, the Bill itself begins with a sharp focus on the relationship between Barbados and the international community. In the face of global developments regarding human sexuality as it affects childcare and

---

<sup>1</sup> Child Protection Bill, 2023, Section 3.1

Veronica C. Evelyn, Consultant Sociologist. B. A(Hons); M. Phil.; Ph. D.; Cert. Social Work(Dist.).

Cert. Addiction Studies(Dist.) MSCEIT™ Certified.

## Submission to the Joint Select Committee (standing) on the Child Protection Bill, 2023

protection, we, as a country, can choose to bury our heads in the sand or to address the matter head-on. This submission favours the latter.

### THE LOCAL SITUATION

Referring to legal systems of modern societies which recognise “many different forms of human relationships” the 2020 Throne Speech advised that “Barbados cannot afford to lose its international leadership place and reputation. Nor can a society as tolerant as ours, allow itself to be “blacklisted” for human and civil rights abuses or discrimination on the matter of how we treat to human sexuality and relations.”<sup>2</sup>

Consistent with this philosophy, Article 1 of the approved **Charter of Barbados, 2021** included the term ‘sexual orientation’ as a category for non-discrimination. The Charter is non-justiciable but the inclusion of the term in the new Constitution is now under consideration by the Constitutional Reform Commission (CRC), members of which have publicly declared their preference for the term to be included in the supreme law of the land. It must be noted that the concept of sexual orientation has no international consensus and is stoutly rejected at the United Nations and in other international fora especially by African and Arab nations.

In Barbados, in recent times the issues of sexual orientation, sex, gender and gender identity have systematically been considered in new and proposed legislation, policies and educational material concerning children:

- With funds received from the Caribbean Development Bank in 2016, the University of the West Indies developed a regional curriculum, “**Gender socialization in Early Childhood Education**” which is now being used in some Early Childhood Education centres.
- In January 2023, The Ministry of Education included ‘personal identity’ and ‘gender neutrality’ as two of the 8 core values in a **National Grooming Policy** for schools.
- Section 4.2 of the **Barbados School Nutrition Policy** states that “The MOHW shall accelerate efforts for the establishment of adolescent-friendly clinics” which, among other things, will assess the sexual and reproductive health of adolescents.
- Currently, a **Child Justice Bill, 2023** is under consideration. Like the **Child Protection Bill**, this Bill states that its purpose is to ensure compliance with international instruments.
- The present **Child Protection Bill, 2023** uses language which lends itself to contradictory interpretations concerning human sexuality issues. The precise value and function of this ambiguity rests on whether or not the Bill is intended as another incremental step towards alignment with “the legal systems of modern societies [which] recognize many different forms of human relationships.”<sup>3</sup> As evidenced in other countries, linguistic ambiguity in legislation can pave the way for full-fledged immersion in the world of sexual orientation

<sup>2</sup> SPEECH FROM THE THRONE by Her Excellency Dame Sandra Mason, G.C.M.G., D.A., Q.C. (P.54)

<sup>3</sup> *ibid.*

Veronica C. Evelyn, Consultant Sociologist. B.A (Hons); M. Phil.; Ph. D.; Cert. Social Work (Dist).

Cert. Addiction Studies (Dist.) MSCEIT™ Certified.

# Submission to the Joint Select Committee (standing) on the Child Protection Bill, 2023

and gender identity (SOGI) that is being advanced by many of the international Treaties, Protocols, Commissions and Conventions to which Barbados is signatory.

To date, there have been mixed messages concerning national views on sexual orientation and gender identity. What is said in public by relevant authorities consistently contradicts what is written into laws and policies, and the country's philosophical stance towards SOGI and SOGI-related issues such as child protection, remains inconsistent and unclear.

There has been no serious national dialogue focusing on the relationship between the evolving views regarding human sexuality and their contribution towards, or negative impact on, *"the causes that are important to safeguarding the future prosperity and stability of Barbados."*<sup>4</sup> Article V (p11) of the Charter suggests that international obligations will not take precedence over such causes. Yet, there has been no firm indication as to how the country will manage situations in which there is a clash between international obligations and national wellbeing. In fact, far from acknowledging the possibility of such a conflict, high-placed public servants have repeatedly assured the country that Barbados need not concern itself with matters which, in their opinion, do not currently exist and perhaps, will never challenge the country.

## THE INTERNATIONAL CONTEXT

Barbados is currently signatory to several international instruments<sup>5</sup> some of which are being interpreted in a manner which provides an engine for the controversial concepts of sexual orientation and gender identity<sup>6</sup> and the evolving implications of these concepts for the reconstruction of societies in child-related areas such as:

- Marriage
- Family
- Parental authority
- Parent-child relationships
- Sex education in schools

---

<sup>4</sup> Article V (p.11) of the Charter of Barbados refers to "causes that are important to safeguarding the future prosperity and stability of Barbados and the Caribbean."

<sup>5</sup> For example, the International Covenant on Economic Social and Cultural Rights (ICESCR), Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), The Inter-American Commission on Human Rights (IACHR).

<sup>6</sup>The concept is complex but has been used in official documents in Barbados without definition or clarification. This is not best practice. According to the World Health Organization, sexual orientation involves three elements: sexual attraction, sexual behaviour and sexual preference. It provides no guidelines for the scope of sexual preference. As far as gender identity is concerned, the WHO differentiates between gender, sex and gender identity: *"Gender and sex are related to but different from gender identity. Gender identity refers to a person's deeply felt, internal and individual experience of gender, which may or may not correspond to the person's physiology or designated sex at birth."* [Gender \(who.int\)](https://www.who.int/gender)

Veronica C. Evelyn, Consultant Sociologist. B. A (Hons); M. Phil.; Ph. D.; Cert. Social Work (Dist.).

Cert. Addiction Studies (Dist.) MSCEIT™ Certified.

# Submission to the Joint Select Committee (standing) on the Child Protection Bill, 2023

Since the proposed legislation clearly states that its purpose is to ensure compliance with international instruments to which Barbados is signatory, it is reasonable to assume that, unless otherwise indicated, words and phrases used within the Bill are also in accordance with related interpretations used in these instruments.

Given the local and regional context, The Child Protection Bill needs to be rigorously examined, particularly in three areas:

1. The purpose of the Bill
2. The language of the Bill
3. The lack of definition of important concepts

A dispassionate review is necessary if the Bill is to work in the interest of the long-term sustainable development of the country. Our children are our future.

## 1. PURPOSE OF THE BILL

- i. Section 3.1 of the Bill states that its purpose is to ensure compliance with the United Nations Convention on the Rights of the Child, The Universal Declaration of Human Rights and *“all other international instruments to which Barbados is a party.”* It is suggested that the specific international instruments referred to be thoroughly perused and included in a footnote. This would provide a better understanding of the context of the Bill.
- ii. Article V of the Charter of Barbados states: *“We will honour our international obligations while championing the causes that are important to safeguarding the future prosperity and stability of Barbados and the Caribbean.”* As a sovereign nation, albeit a Small Island Developing State, Barbados’ first obligation is to itself, not to the international community. Notwithstanding the desirability of international co-operation, the primary purpose of the ***Child Protection Bill, 2023*** would be better stated with reference to the children of Barbados. By stating that the purpose is to ensure compliance with international instruments, the country tacitly acknowledges satellite status vis à vis the international community. It would be preferable to rework the underlying motivation for the Bill to prioritize the welfare of Barbadian children as both an end in itself and a means to an end; that end being the long-term sustainable development of the country.

## 2. LANGUAGE

Over the past few years, in international circles language, like gender, has taken on custom-made meanings and has become subjectively fluid. Frequently used words and phrases sometimes go beyond standard meanings. In some cases, entirely new concepts have been developed, and significantly, words and phrases with previously taken-for-granted meanings have been invested with new definitions and/or connotations. For example, the words ‘justice’ ‘dignity’ and ‘equality’ now have very different interpretations depending on one’s beliefs about sexual orientation and gender identity. In the same way, some words and phrases used in the Bill have little meaning except within the context of a given philosophical framework. Consider, for example:

Veronica C. Evelyn, Consultant Sociologist. B.A (Hons); M. Phil.; Ph. D.; Cert. Social Work (Dist.).

Cert. Addiction Studies (Dist.) MSCEIT™ Certified.



# Submission to the Joint Select Committee (standing) on the Child Protection Bill, 2023

- Protection
- Abuse
- Parental responsibility
- Welfare of the child
- Cruelty to children
- Health and safety of the child
- Best interest of the child

Until the country identifies its philosophical stance regarding the newly developed concepts of sexual orientation and gender identity, any legislation that even remotely touches on these issues will be susceptible to subjective interpretations. Barbados is not immune to the unprecedented social change brought about in other countries by acceptance of the twin concept of sexual orientation and gender identity. Therefore, before it commits to what may be seen as a social experiment that is still evolving, the country needs first to have a serious and mature dialogue about the impact of SOGI on the long-term sustainable development of the island, including the impact on its human capital. The question that must be examined thoroughly with reference to SOGI-related litigation in other countries, is: *Does Barbados have sufficient financial, natural or human resources to cushion any negative outcomes and to sign into law, a Child Protection Bill that has, as its raison d'être, compliance with international instruments that espouse SOGI?*

### 3. UNDEFINED CONCEPTS

Given the purpose of the Bill as stated in 3.1, and the evolving denotations and connotations of previously taken-for-granted words and concepts, the following need to be clearly defined in the Bill according to the country's philosophical stance towards the twin concept of sexual orientation and gender identity:

3.1 (e) "The best interest of the child"

3.2 (b) "The capacity of a parent to properly discharge his parental responsibility". "Parental responsibility" is defined in general terms in Section 2 p.14. It includes 'rights and duties' as defined in Section 5 (1) of the Child Care Board Act (p.4) and further specifies "powers, responsibilities and obligations that by law a parent has in relation to a child." This is an example of how linguistic ambiguity can facilitate interpretation-on-demand.

3.2 (c) "The physical, mental, emotional or psychological needs and development of the child."

3.2 (d) "the appropriate care or treatment required to meet the needs or development of the child."

4. (a)<sup>7</sup> "the safety and welfare of a child."

Taken together and in the context of 3.1, these sub-sections logically lead to questions such as: "Does the 'authority of the Authority'(p.11) to "consent to the medical treatment involving surgery that a

---

<sup>7</sup> P.16

Veronica C. Evelyn, Consultant Sociologist. B. A (Hons); M. Phil.; Ph. D.; Cert. Social Work (Dist.)

Cert. Addiction Studies (Dist.) MSCEIT™ Certified.

## Submission to the Joint Select Committee (standing) on the Child Protection Bill, 2023

*medical practitioner certifies in writing needs to be carried out as a matter of urgency and in the best interest of the child” ([b] p.11) mean that the State can consent to gender-affirming surgery for a child without a parent’s approval? Does “parental responsibility” include the responsibility of a parent to allow a child to transition to a gender other than its birth gender if it is felt that this is needed to fulfil his ‘mental, emotional or psychological needs and development’? Can a Care Order be made with respect to parents who are deemed ‘abusive’ because they do not support a child’s belief that he/she is living in the wrong body?*

In the absence of clear definitions, and within the context of compliance with international instruments, provisions of the Bill are open to tailored interpretations. There is ample evidence to support such a claim. Consider for example the details of the Bowden decision on Feb. 27, 2019, in the Supreme Court of British Columbia (Citation: A.B.v.C.D. and E.F., 2019 BCSC 254)<sup>8</sup> or the September 28, 2021, ruling of the Supreme Court of Western Australia in the case of TM<sup>9</sup> (File Number: PER/PC 629 of 2019). Also consider the recent (August 14, 2023) ruling of the 4<sup>th</sup> U.S. Circuit Court of Appeal (No. 22-2034)<sup>10</sup> regarding the Montgomery County Board of Education Guidelines for Gender Identity. These Guidelines permit school officials to develop plans to support the transitioning of children<sup>11</sup> and to withhold this information from parents if they are deemed to be unsupportive of the transition. These and many similar rulings and judgements indicate the challenges that will inevitably confront the country if the proposed Child Protection Bill is enacted without either a clear articulation of the national stance on sexual orientation and gender identity, or clear definitions of critical – but ambiguous - words and phrases.

During the COVID-19 pandemic, the mantra was, *“Follow the science and act out of an abundance of caution.”* The same approach is needed to ensure that the **Child Protection Bill, 2023** does not prove to be a pig in a poke. Committing to the dictates of international instruments that espouse the non-biological concept of sexual orientation, is to abandon science. To enact a law without acknowledging the destabilizing social issues which similar laws have caused in other countries, and without a comprehensive national dialogue/debate, is to act without necessary caution. In proverbial terms, the choice is clear with reference to reviewing the Child Protection Bill: the country can look before it leaps, or it can try to close the stable door after the horse has bolted.

It is strongly advised that, in all new legislation concerning children, the country act out of an abundance of caution. If we choose to walk into the world of SOGI and its concomitant issues, let us do so with eyes wide open. The relevant authorities are urged to revisit the Child Protection Bill, reconceptualize its purpose, review and revise the language so that the provisions of the Bill are consistent with a well-reasoned national stance on sexual orientation and gender identity. This is

---

<sup>8</sup> [Bowden decision Feb 27 2019.pdf | DocDroid](#)

<sup>9</sup> [WM -v- CEO FOR DEPARTMENT OF COMMUNITIES |2021| WASC 325 - eCourts Portal \(justice.wa.gov.au\)](#)

<sup>10</sup> [MCBE amicus as filed.pdf \(ca.gov\)](#)

<sup>11</sup> Use preferred name, pronouns, bathroom etc.

Veronica C. Evelyn, Consultant Sociologist. B.A (Hons); M.Phil.; Ph.D.; Cert.Social Work (Dist).

## Submission to the Joint Select Committee (standing) on the Child Protection Bill, 2023

critical to safeguarding *'the future prosperity and stability of Barbados'*.<sup>12</sup> It is also necessary for the sensible protection of our children, our future.

---

**Postscript:** I would be happy to answer any questions that may arise from this submission. Please schedule me for an in-person interview before the Joint Select Committee. Thank you.

---

<sup>12</sup> Charter of Barbados 2021, Article V.

Veronica C. Evelyn, Consultant Sociologist. B. A (Hons); M. Phil; Ph. D.; Cert. Social Work (Dist.).

Cert. Addiction Studies (Dist.) MSCEIT™ Certified.



**CHILD PROTECTION BILL, 2023  
CHILD JUSTICE BILL, 2023**

**SUBMISSION BY - BARBADOS COUNCIL FOR THE DISABLED**

**28 August 2023**

In reviewing the Draft Bills, the Barbados Council has found that the inclusion of children with disabilities has been succinctly incorporated.

In an effort to reiterate and avoid future uncertainty, the Council recommends that the final document be more inclusive by being more contextual e.g. adding “children with disabilities” wherever examples of service to recipients are provided in the Bill.

As a State Party to the United Nations Convention on the Rights of Persons with Disabilities the Government of Barbados must be guided by the Treaty as well as the Universal Declaration of Human Rights that everyone including Persons with Disabilities is entitled to all the Rights and Freedoms as set forth therein, without distinction of any kind.

0.0

Dear Members of the JSCS on the Social Sector and

The Council does not have any issues with the two bills as they addressed all areas of a child's rights to access services and justice.

The major issue we have and had for years is the noticeable categorizing of "children with disabilities" within the context of "children".

**Awareness is key.** The Council understands and do not expect that a Bill would specify defined targeted groups. Every group would want to be named.

However, the case of not being clearly defined began way back with the UN when the Council was advocating locally and internationally for the Treaty on the Rights of Persons with disabilities (PWD) (UNCRPD)

Oftentimes the tone of the day was to generalize the Service Recipients (PWD) within policy development and as a result many Service Providers failed to recognize the special needs and reasonable accommodation required for Persons with Disabilities. From our experience this has caused numerous inadequate service delivery to some of these specific needs, causing additional trauma and financial challenges to all concerned.

We strongly recommend wherever possible, when identifying "child" in the Bills that you add "**includes/including child with a disability**".

**This is futuristic planning as we have recognized that past planners never factored in the environmental and non-communicable diseases that have given rise to so many disabilities.**

With due respect to your work, I hope this submission is taken into consideration.

Yours truly  
Roseana Tudor  
Operations Manager  
**Barbados Council for the Disabled**





Dear Sirs

My name is Junior (Jay) Campbell and I am an England-based Barbadian holistic communications and education specialist, trading as Intelek International.

I write to express my deep concern about Barbadians' capacity to understand the proposed Child Protection and Justice Bills, let alone approve or disapprove of it, in total or in part.

This concern stems from my more than 40 years' study of the disconnect between Barbadians' communication hopes and habits.

I have been pursuing this study in both formal and informal educational contexts, including a 10-year stint at the University of the West Indies (Cave Hill), where I engaged an eclectic mix of curricular and extra-curricular activities.

That engagement was motivated by my earnest desire to understand the role that the evangelical fundamentalist Pentecostal religion I embraced in 1982 had been playing in my own life and that of other Barbadians, of all faiths and "none" (we all have a "faith", loosely defined, in something).

And it culminated with my bachelor of arts Linguistics thesis, titled "A Voice From Heaven: Could the Study of Glossolalia Benefit Linguistic Theory?"


That study of glossolalia, better known as "speaking in tongues" is the first by a Pentecostal 'tongues speaker' anywhere in the world, so far as I am aware.

It may therefore be considered the embryonic beginning not just of my formal academic career but an exciting, potentially amazing area of study for Barbadians, Caribbean people and other people around the world, given the global persistence and prevalence of glossolalia, in Christian and other religious and secular contexts.

Sadly, however the hope-filled excitement and amazement that I and others, including my wife, children and other relatives, friends and business associates may have legitimately anticipated in 2005 (when I and other Barbadians were riding the crest of a cultural renaissance wave) took on a toxic tinge.

Various conscious or unconscious gender, race and religious racketeers saw an opportunity to engage in what the recently deceased Barbados prime minister Sir Lloyd Erskine Sandiford has ruefully called "academic politics" and they did so to my, his, the late prime minister Owen Arthur's, his successors' David Thompson's, Freundel Stuart's and Mia Mottley's and indeed all Barbadians' detriment.

Various gender, race and religious racketeers, apparently motivated by the worst, most lethal, legalistic instincts and *habits* that Barbados' 98% literacy 'lurgy' could generate, sought to dull or



destroy the shining-star, childlike hope that my fundamentally scientific, Linguistic study of glossolalia incarnated.

And while they have not succeeded, these men, women and whatever else they may choose to call themselves have left me in no doubt about their cynical, nihilistic capacity to subvert Barbadian, Caribbean and global legislation.

They have left me in no doubt about their pathological potential to pervert the course of justice in Barbados, the Caribbean, the Americas and elsewhere.

Hence my concern about our individual and collective capacities to engage with what American academic and artist Gabriella Boyd calls the "Child Justice Bill".

Commenting on that Bill in a Latina Republic article, Boyd writes "Additionally, this will also improve the language of prior bills passed, to decrease ambiguity when determining court sentences. In the Juvenile Offenders Act, the wording can lead to misinterpretation when determining punishment for child offenders, leading to unfair or unreasonable judging in a court of law."

I appreciate her point. But Boyd may be infected by the same literalistic 'lurgy' that lurks, COVID-19 like, in the hallways and lecture rooms of UWI Cave Hill, St. Augustine, Mona and elsewhere - like the dreaded dragon in the book of Revelation, waiting to pounce on the brain children of youthful innocence.

Boyd seems oblivious to the predatory paedophile, plagiarist potential of Barbadian-Caribbean academia, and the extent to which it has penetrated international academic praxis - aided and abetted by supremely self-righteous scribes and Pharisees who contaminate global media-politics.

How can we protect children, when we do not know what a child is?

When we can hardly agree on what constitutes a "woman", "man" or "family" what hope have we of understanding and supporting them, by legal or other socially sustainable instruments?

We need to appreciate and understand the limits of the law. The limits of all written things. We need to appreciate the limits of all secular and religious "mass media" based communication systems.

George Lamming knew it. But he may have forgotten.

Margaret Gill and Esther Phillips, Barbados' "National Poet" once knew it.

Have they forgotten as well?

We all forget, sometimes.

I know that only too well.

That is why I write things down.

That is possibly the best literacy can get.

But there is no academic or other substitute for the conscientious, habituated presence of mind that inclines us to be kind.

Call it love. Call it what you will.

C.S. Lewis might call it forgiveness forged through *repentance*.

I occasionally cite Lewis, as I might Nelson Mandela, Desmond Tutu, Nadine Gordimer, Dame Nita Barrow and other elders who have demonstrated a childlike faithfulness to the law of love.

Lewis is cited in my open letter to Pope Benedict XVI, published in 2010, and which speaks to the perilous situation in which Barbadians find ourselves, relative to our children.

Junior Campbell

Intelek International





# CHILD CARE BOARD

Government of Barbados

THE FRED EDGHILL BUILDING, CHEAPSIDE  
ST. MICHAEL.



C11

Our Ref. 702/3/2023

E-mail: [childcareboard@barbados.gov.bb](mailto:childcareboard@barbados.gov.bb)

Tel.: (246) 535-2800

Fax.: (246) 435-3172

September 18, 2023

Miss Beverley Gibbons  
Deputy Clerk of Parliament  
Parliament Buildings  
Bridgetown  
**ST. MICHAEL**

Dear Miss Gibbons

**Re: Child Protection Bill, 2023**  
**Child Justice Bill, 2023**

The Child Care Board acknowledges receipt of your correspondence which was received in the department on August 15, 2023 and September 15, 2023, regarding the subject at caption.

The Child Care Board (CCB) through its Director, Deputy Director and the views of the Senior Child Care Officers and Child Care Officers has been an integral part of the process to develop the Draft Child Protection Legislation. The Child Protection Bill was tabled in Parliament in May 2023. Since the Bill was tabled in Parliament, there have been many comments on the Call-in Programmes, articles appeared in the Nation Newspaper and there has been a public protest-march with participants speaking negatively about the Bill. More particularly, the general consensus is that the Bill is seeking to rob or deny parents of their rights to parent their children.

The CCB considered all the comments that were made and the Social Work staff revisited the Bill.

The Child Care Board submits these comments having given careful thought to what has been said by the public with respect to the Bill.

The CCB apologises for the delay in submission of this information.

Yours faithfully

**ROSEANN RICHARDS**  
**Director, Child Care Board**

RR/

Enc.

**Child Protection Bill, 2023**  
**Child Justice Bill, 2023**

- *The Child Care Board (CCB) recommends that the Board's Legal Adviser be present when the Board is making its presentation to the Joint Select Committee because she is better able to highlight any areas of concerns with the Bills and the implications involved for the Child Care Board.*
- Both the Child Protection and Child Justice Bills do not speak to any consequences for parents who abuse children. It was queried if a child under twelve (12) years harms/kills someone who would be liable.

**Child Protection Bill**

Throughout the Bill 'Child Care Centre' should be changed to 'Child Protection Facility' as internationally 'child care centre' refers to day nurseries.

**Page 19, Section 5 (e)**

**Abandonment** and **desertion** should be defined and a time frame for desertion should be included.

**Page 19, Section 5, (f)**

This statement is too broad, specifically the word "moral", taking into consideration that concerns are being raised re. transgender and sex change.

***It is being recommended that the word "moral" be removed as it is subjective.***

**Page 19, Section 5, h (i)**

"does not, or refuses to, obtain treatment; or."

Concerns were raised regarding responsibility; it was suggested if a child is hospitalized the hospital should act rather than call the CCB.

When a child is hospitalized and the parents refuse to give permission for the child to get medical treatment who is responsible?

***Clarity needs to be provided on the role of the Queen Elizabeth Hospital (QEH) and the CCB as it relates to medical neglect.***

**Page 40 Section 31 (1 and 2)**  
**Removal of a child by the Director**

At 31, (1) b remove "if necessary" from "the Director may, *if necessary* with the assistance of a ....."

It is being recommended that Police accompany Senior Child Care Officers and Child Care Officers at all times when removing children to enforce the Law. Officers are concerned about the contentious nature of child protection, which can place Officers in harm's way. Additionally, Officers do not have the authority to enter person's homes.

**Page 39, Section 30 (6)**

**Action taken by the Director**

The word "plan" should be inserted after "care"

**Page 42 Section 33**

**Residential protection and treatment centre order**

Section 33 of the Child Protection Bill makes provision for a residential and treatment centre order, however, the Child Care Board in its current operations is required to admit into care children who exhibit severe behavioural and emotional issues (conduct disorders).

The Child Care Board in its current establishment will be a part of the new amalgamated entity. Therefore, it is being recommended that provision be made for the creation of a Secure Treatment Facility which will cater to children with extreme behaviours. This may require additional staff and training.

## **Child Justice Bill**

### **Principles to be applied when dealing with children**

#### **Page 18 6. (1), (d)**

The word "beliefs" needs to be clarified.

Specify if these "beliefs" are religious, faith-based or any other.

Throughout the Child Justice Bill reference is made to a "secure residential facility", this is not clearly defined.

The "facility" needs to be identified for protection and treatment.

Definitions and examples are required for:

Children's Homes

Secure Protection Facility, and

Secure Treatment Centre

In addition, a secure treatment facility is needed for children who present with mental health issues and/or drug abuse.

Timelines should be identified for the execution of Orders by Officers.



# **BARBADOS BAR ASSOCIATION**

## **Comments On The**

### **Child Protection Bill**

The Barbados Bar Association expresses its gratitude and has welcomed the invitation to comment on the Child Protection Bill. One of the first questions we do raise is "What is the jurisdiction of this Bill? Does it extend to all children who are in Barbados whether they are resident or citizens of Barbados or not?"

The BBA would wish to state the desirability of seeing the underlying policy paper in order to provide full context to its comments.

Barbados Bar Association  
Per

Kaye Williams  
President



<u>Legislative Provision</u>	<u>Comments</u>
<u><b>Jurisdiction</b></u>	<ul style="list-style-type: none"> <li>• What is the jurisdiction of this Bill? Does it extend to all children who are in Barbados whether they are citizens of Barbados or not?</li> </ul>
<u><b>Definition section</b></u>	
<p><i>“child” means a person who is under the age of 18 years;</i></p>	<ul style="list-style-type: none"> <li>• It is noted the <b>“child”</b> is defined simply as a person who is under the age of 18 years.  It should be noted that some persons who are under the age of 18 years, are legally allowed to engage in adult activities. Thus a 16 year old can marry [see the <b>Marriage Act</b>] and 16 year old persons can consent to sexual intercourse.  We would suggest that the definition of child be adjusted to take this into consideration.</li> </ul>
<p><i>“emotional abuse” means any act by a perpetrator which causes psychological pain or injury to a child or is likely to cause significant harm to the welfare or development of the child; and includes</i></p>	<ul style="list-style-type: none"> <li>• <b>“Emotional abuse”</b> - included in this definition is any act... which causes psychological pain or injury. We had a difficulty with the use of the phrase “psychological pain”. How can this be proved? What is psychological pain?</li> </ul>



<u>Legislative Provision</u>	<u>Comments</u>
<p>harassment, the use of threatening words or behaviour;</p>	<ul style="list-style-type: none"> <li> <p><b>“financial abuse”</b> is defined to “include withholding the financial support necessary to maintain a child”.</p> <p>It is felt that this last phrase cannot be accurately said to be financial abuse of a child since it is not an act perpetrated on the child directly. Withholding of maintenance would cause financial hardship for the child as well as the receiving parent but could not be said to be financial abuse of a child.</p> <p>Financial abuse of a child usually includes identity theft.</p> </li> </ul>
<p><b>“guardian”</b> means a person who assumes or has the legal responsibility and authority for making decisions with respect to a child;</p>	<ul style="list-style-type: none"> <li> <p>In defining the word <b>“guardian”</b> we would include a person who has care and control of a child and not limit the definition to someone who assumes or has the legal responsibility and authority to make decisions concerning the child.</p> <p>It is possible for someone to have the legal responsibility to make such decisions but who does not have the child in his /her physical care and it is important to include in this definition someone who would have physical control of the child.</p> </li> </ul>



<u>Legislative Provision</u>	<u>Comments</u>
<p><b>“parent”</b> means any person at law liable to maintain a child or entitled to his custody and includes a child’s birth parent where the child has not been adopted; a child’s adoptive parent where the child has been adopted; and a child’s guardian; does not include a person acting as care giver on behalf of the Director or the Director;</p>	<ul style="list-style-type: none"> <li>• <b>“parent”</b> the definition needs to reflect today’s reality and birth should include birth or biological. In a scenario of a surrogate a birth mother for example, is the mother who gave birth but might have no biological connection to the child. Whilst a biological mother might not have given birth, but she would have a biological connection to the child.</li> <li>• Under the Family Law Act a child can be deemed a child of the marriage in circumstances where one “parent” has no biological connection to the child, nor has formally adopted the child. This could create a situation where only the biological “parent” falls to be considered under this definition.</li> </ul>
<p><b>“physical abuse”</b> means any act or omission by a perpetrator which causes pain or injury to the body of a child and includes bullying;</p>	<ul style="list-style-type: none"> <li>• <b>“Physical abuse”</b>- we queried if the word “omission” should be included here.</li> </ul>
<p><b>“verbal abuse”</b> means the use of derogatory or negative language or communication to harm, manipulate or control another person, whether communicated by silence, damaging gossip, and other passive-aggressive</p>	<ul style="list-style-type: none"> <li>• <b>“Verbal abuse”</b>- is defined to include behaviour communicated by silence. It is felt that verbal abuse should mean the use of words and not include silence.</li> </ul>





<u>Legislative Provision</u>	<u>Comments</u>
<p><i>behaviours; and includes shouting, insulting, intimidating, threatening, shaming, demeaning, or name calling.</i></p>	
<p><b><u>Section 3 (2) (e), page 17</u></b></p> <p><b>3. (2)</b> <i>In determining what is in the best interest of the child, the following matters shall be taken into account:</i></p> <p><i>(e) where appropriate, the views of the child;</i></p>	<p>In relation to the views of a child are to be sought, it is felt that an age limit should be specified given that the word child is so broadly defined.</p>
<p><b><u>Section 4 (c), page 17</u></b></p> <p><b>4.</b> <i>The following principles shall be applied in the administration of this Act:</i></p> <p><i>(c) where a child is able to form his own views on a matter concerning his safety or welfare</i></p> <p><i>(i) he shall be afforded an opportunity to freely express</i></p> <p><i>(ii) his views; and his views are to be given due weight in accordance with his</i></p>	<p>The same caution should be applied to this section so that where the child's opinion is sought there should be an age limit when such views would be taken into account.</p>



<u>Legislative Provision</u>	<u>Comments</u>
<p>developmental capacity and the circumstances;</p>	
<p><b><u>Section 4 (e) (i), page 18</u></b></p> <p><b>4.</b> <i>The following principles shall be applied in the administration of this Act:</i></p> <p><i>(e) where a child is temporarily or permanently deprived of his family environment or cannot be allowed to remain in that environment in his best interest</i></p> <p><i>(i) the child shall be entitled to special protection and assistance from the Government of Barbados; and</i></p>	<p>We saw no need for this to be inserted. All children should be entitled to special protection and assistance from the Government of Barbados, not just those who are temporarily or permanently deprived of their family environment. This could be viewed as being discriminatory.</p>
<p><b><u>Section 5 (1) (f), page 19</u></b></p> <p><b>5. (1)</b> <i>A child is in need of care and protection where the child</i></p>	<p>The inclusion of the word “moral” danger is ambiguous and could be very subjective. What exactly is moral danger? It was proposed that the word “moral” should be removed.</p>



<u>Legislative Provision</u>	<u>Comments</u>
<p><i>(f) has been exposed to danger, moral or otherwise;</i></p>	
<p><b><u>Section 5 (1) (g), page 19</u></b></p> <p><i>5. (1) A child is in need of care and protection where the child (g) has suffered physical, emotional or psychological harm caused by being exposed to domestic violence by or towards a parent or other person residing with the child;</i></p>	<p>The concern about this section is that it involves the victim as well as the perpetrator of domestic violence. Given the very wide powers of the Director, this could mean that a child could be removed from the care of the victim of domestic violence if the child witnessed the victim being abused. This is viewed as being capable of penalizing the victim and not just the perpetrator of domestic violence.</p>
<p><b><u>Section 5 (2), page 20</u></b></p> <p><i>5. (2) A child in need of care or protection may seek assistance from the Director.</i></p>	<p>This seems to give a child the ability to initiate action on his/her own without the assistance of a parent or guardian. Is this intentional?</p>
<p><b><u>Section 7 (1), page 20</u></b></p> <p><i>7. (1) A child shall be entitled to participate in a decision that is likely to have a significant impact on his life.</i></p>	<p>Again, our concern is with the lack of qualification here. An age limit should be imposed in this section given the definition of a child as anyone under the age of 18.</p>



<u>Legislative Provision</u>	<u>Comments</u>
<p><b><u>Section 7 (4), page 21</u></b></p> <p><i>7. (4) child shall be entitled to legal representation by an attorney-at-law in any proceedings or hearings in relation to the child.</i></p>	<p>A child is afforded legal representation by an attorney-at-law in any proceedings. This is a very important provision. Provision should be made for the Attorney-at-law to be paid by the state. It is not clear whether that will be done. At present where children are separately represented in Court, the attorney-at-law is usually covered by legal aid.</p>
<p><b><u>Section 8 (1), page 22</u></b></p> <p><i>8. (1) There is established an Authority to be known as the Child Protection Authority.</i></p>	<p>It is not clear whether the Authority established here will also be the Central Authority as required by the <i>Hague Convention</i> on the Civil Aspects of International Child Abduction to which Barbados is a signatory.</p> <p><b>(The Hague Convention</b> is a multilateral treaty that provides an expeditious method to return a child internationally abducted by a parent from one member country to another. The convention was drafted to ensure the prompt return of children who have been abducted).</p> <p>If it is, as the Child Care Board is at present, then it should be stated in this section of the Bill which establishes the Authority.</p> <p>This would be appropriate given the powers that the Authority has been given under Section 43 of the Bill (see pages 51 and 52) to recover a child that has been</p>





<u>Legislative Provision</u>	<u>Comments</u>
<p><b><u>Section 24 (1), page 32</u></b>  <b><i>24. (1) This section shall apply to</i></b></p>	<p>unlawfully taken or is being taken away from the person who has responsibility for the child.</p> <p>This is the section that deals with mandatory reporting. Concerns have been raised about this obligation being placed on any person who provides health care and religious care to a child.</p> <p>Doctors are concerned that if they are forced to make such reports, they would be in breach of the requirement for doctor/patient confidentiality. They also believe that if a child is aware that the doctor must report his/her findings to the State then children would stop arranging to see a doctor and might instead choose a secret but illicit method of seeking medical care which could ultimately lead to them not receiving proper medical care and could also lead to the creation of an underground community that serves children.</p> <p>The concern has also been raised with respect to Catholic priests and the confessional seal which they are not supposed to break.</p> <p>A dispensation has been given to Attorneys-at-law at Section 24 (5) (see page 33). It is proposed that a similar dispensation be made for doctors and Catholic priests.</p>



<u>Legislative Provision</u>	<u>Comments</u>
<p><b><u>Section 28 (5), page 37</u></b></p> <p><i>28. (5) In conducting an investigation or assessment under this section, the Director shall have regard to any wish of the child taking into account</i></p> <p><i>(a) the age and maturity of the child; and</i></p> <p><i>(b) the extent to which the child appears to be in need of care and protection.</i></p>	<p>This is especially important bearing in mind the penalty imposed for failure to comply with this provision. See Section 24 (7) on page 33.</p> <p>The same caveat should be applied to this section as has been mentioned before, that there should be an age set at which such wishes of a child are to be taken into account.</p> <p>We note the very wide powers given to the Director by Section 31 (page 40) and welcome the requirement that where the Director removes a child under this section that he/she is required to apply to the Court for an Order within 24 hours.</p>
<p><b><u>Section 32 (f), page 41</u></b></p> <p><i>32. Where the court is satisfied that a child brought before it by the Director is a child in need of care and protection, the court may make the following orders:</i></p> <p><i>(f) acustody care order;</i></p>	<p>We notice a reference here to a custody care order. Normally within the context of children, one speak of custody which is the bundle of rights conferred by law on parents with respect to their children while the care of the child simply means who has the physical day to day care of the child. Thus a father who is married to the mother of the child shares custody of the child with her but he may not have the physical care and control of the child as happens if they are separated or divorced.</p>



<u>Legislative Provision</u>	<u>Comments</u>
	<p>The two should not be conflated. Therefore, one should speak of a custody Order or a care Order and not a custody care Order.</p>
<p><b><u>Section 34 (1) (a), page 42</u></b></p> <p><b>34.</b> <i>The court shall make an emergency protection order where it is satisfied, on the basis of an ex parte application by the Director, that</i></p> <p><i>(a) the child is suffering or is likely to suffer physical, emotional, mental or psychological harm and is in urgent need of care and protection; or</i></p>	<p>The query here is what is psychological harm and how is it proved? Who is the applicant referred to in Section 34, 2 (b),</p> <p>How is that person able to determine that a child has suffered psychological harm if he/she is not a psychologist?</p> <p>The fact that this kind of Order cannot last more than 14 days unless specifically extended is a welcome addition to the section. It should be noted that even when extended the extension can only last for 14 days.</p>
<p><b><u>Section 36 Social Inquiry Report, page 45</u></b></p> <p><b>36. (1)</b> <i>The court shall require a written social inquiry report in respect of a child before it makes an order under this Part.</i></p> <p><b>(2)</b> <i>The Director shall prepare a social inquiry report and he shall comply with the request of the court whenever</i></p>	<p>This already happens in our Courts but such inquiries are usually done by the Family Services Division of the Welfare Department. Will this practice be discontinued or will the Welfare department act in aid of this new Authority?</p>



<u>Legislative Provision</u>	<u>Comments</u>
<p>required to produce a social inquiry report.</p> <p>(3) <i>The Director shall make a home visit to interview the parent of the child concerned and carry out his or her investigations concerning the child before making a social inquiry report.</i></p> <p>(4) <i>Where the child in respect of whom the social inquiry report is made is considered by the Director to be of sufficient age and understanding, he shall be interviewed by the Director.</i></p> <p>(5) <i>A social inquiry report shall contain matters relating to the welfare of the child and recommendations as to any action to be taken by the court.</i></p> <p>(6) <i>The court shall take the information contained in the social inquiry report into account in so far as it is relevant to the order being made.</i></p> <p>(7) <i>Where the court is not satisfied with any recommendation made by the Director in the social inquiry report, the court shall state and record its reasons</i></p>	





<u>Legislative Provision</u>	<u>Comments</u>
<p>for not complying with the recommendation.</p>	
<p><b><u>Section 38 (1), page 47</u></b>  <b>38. (1)</b> <i>The court shall not make a final order for the removal of a child from the care and protection of his parent or allocation of parental responsibility in respect of the child unless the court has considered a care plan.</i></p>	<p>A care plan for a child in need of care is a laudable endeavour. It is noted however that the only person responsible for preparing such a plan is the Director. It would be useful to include the input of a psychologist or psychiatrist. These may be caught by Section 38 (1) (i), page 48 but it is submitted that these are important enough to be specifically mentioned.</p>
<p><b><u>Section 42, page 50</u></b>  <b>42. (1)</b> <i>where the Director assesses that</i>  <i>(a) there is not a realistic possibility of restoring a child to the custody of a parent pursuant to the provisions of this Act;</i>  <i>(b) it is in the best interest of the child that he no longer live with his parent; and</i>  <i>(c) a least restrictive option is not available; the Director shall make an</i></p>	<p>Our comments are as before. Custody and care are two separate concepts.</p>



<u>Legislative Provision</u>	<u>Comments</u>
<p>application to the court for a custody care order.</p> <p>(2) An application under subsection (1) shall be accompanied by a permanency plan which does not involve restoration and shall be submitted to the Court for its consideration.</p> <p>(3) In preparing the permanency plan under subsection (2), the Director shall determine the type of placement which shall be suitable for the child.</p> <p>(4) Where the court upon examination of the application and permanency plan made pursuant to this Part finds that the grounds upon which the application is made has been substantiated and it is necessary to provide the best interest of the child, the court shall grant the custody care order.</p> <p>(5) A custody care order places a child in the custody of the Authority.</p> <p>(6) Where a child is placed in the custody of the Authority, the Authority shall have the rights and responsibilities of a parent</p>	



<u>Legislative Provision</u>	<u>Comments</u>
<p>for the purposes of the care of the child and those duties shall be assessed and performed by any person caring for (b) (c) (d) 42.(1) (a) (b) (c) (2) (3) (4) (5) (6) 50 the child until the custody care order is terminated by any action which results in the permanent placement of the child.</p> <p>(7) For the purposes of this section “permanency plan” means a plan that aims to provide a child with a stable placement which offers long term security and that</p> <p>(a) has regard, in particular, to</p> <p>(i) the environment of the placement being safe, nurturing, stable and secure;</p> <p>(ii) the best interests of the child; and</p> <p>(iii) the wishes of the child, this may include the retention by the child of relationships with people significant to the child, including his or her birth or adoptive parents, siblings, extended family, peers, family, friends and community;</p>	



<u>Legislative Provision</u>	<u>Comments</u>
<p><i>(b) meets the needs of the child; and</i></p> <p><i>(c) avoids the instability and uncertainty arising through a succession of different placements.</i></p>	





**Queries:**

1. What is the jurisdiction of this Bill? Does it extend to all children who are in Barbados whether they are citizens of Barbados or not?

2. How does this Bill affect the common law remedy of making the child a ward of the Court. The wardship jurisdiction is exercised for the protection of children. It is an old remedy and was inherited by the Supreme Court of Barbados when it was a colony from the British Courts of Chancery.

The practical importance of this device has been curtailed by the existence of statutory custody jurisdictions such as the Family Law Act, the Minors Act, the Maintenance Act and such other types of legislation.

An Application to invoke the wardship jurisdiction in relation to a child other than a child of a marriage must be made in the Supreme Court under the applicable Supreme Court of Judicature Act.

This Act contains detailed provisions which gives the Court power relating to the custody, guardianship of and even access to children.

There is no express wardship power conferred on the Court under this Bill. It could therefore be argued that the inherent jurisdiction of the Court continues unless it comes into contact with the provisions of this Act.

***DOCUMENT ENDS***



**SOME COMMENTS**  
**BY THE**  
**DEMOCRATIC LABOUR PARTY**  
**ON THE**  
**CHILD PROTECTION BILL, 2023**

**Table of Contents**

<b><u>A. GENERAL COMMENTS</u></b> .....	<b>2</b>
• THE CHILD PROTECTION BILL IS A “ONE-SIZE FITS ALL” POLICY .....	2
• THE LANGUAGE USED IN CHILD PROTECTION BILL COLLECTIVELY NEEDS TO MAKE IT CLEARER THAT THE REMOVAL OF A CHILD FROM HIS/HER HOME IS ONLY TO BE EXERCISED IN THE MOST EXTREME CIRCUMSTANCES. ....	2
SOLUTION/ RECOMMENDATION: .....	3
• THE CHILD PROTECTION BILL MAKES OFFENCES TRIABLE SUMMARILY .....	3
SOLUTION/ RECOMMENDATION: .....	3
• THE CHILD PROTECTION BILL UNDERMINES PARENTAL RIGHTS AND SEEMS TO REPLACE THE AUTHORITY OF THE PARENT WITH THE AUTHORITY OF THE DIRECTOR .....	4
SOLUTION/ RECOMMENDATION: .....	4
• THE CHILD PROTECTION BILL CREATES FOSTER HOMES AND CHILD CARE CENTRES.....	4
RECOMMENDATION/ SOLUTION: .....	4
• OVERALL, THE PROVISIONS OF THE BILL ARE TOO WIDE/GENERAL .....	4
SOLUTION/ RECOMMENDATION: .....	4
<b><u>B. SPECIFIC COMMENTS</u></b> .....	<b>5</b>
<b>I. PART I, SECTION 2: INTERPRETATION SECTION</b> .....	<b>5</b>
<b>A. “CARE RESPONSIBILITY”</b> .....	<b>5</b>
<b>B. “CHILD IN NEED OF CARE AND PROTECTION”</b> .....	<b>5</b>
<b>C. “EMOTIONAL ABUSE”</b> .....	<b>6</b>
<b>D. “NEGLECT OF A CHILD”</b> .....	<b>6</b>
<b>E. “SEXUAL ABUSE”</b> .....	<b>7</b>
<b>F. SECTION (3)(1)(E)</b> .....	<b>7</b>
<b>G. SECTION (3)(2)</b> .....	<b>7</b>
<b>H. SECTION (5)(1)</b> .....	<b>8</b>
<b>I. SECTION 7(5)</b> .....	<b>8</b>
<b>J. PART II, SECTION 9: ADMINISTRATION AND THE POWERS AND DUTIES OF THE AUTHORITY</b> .....	<b>8</b>
<b>K. SECTION 23(2)</b> .....	<b>9</b>
<b>L. SECTION 23(6)</b> .....	<b>10</b>

## Introduction

The comments below by the Democratic Labour Party (“DLP”) do not necessarily constitute final comments and the DLP reserves it right to offer further and update the comments on the Child Protection Bill, 2023 (“the Bill”) as currently constituted or maybe revised, and may offer other comments on the Child Justice Bill, 2023.

### A. General Comments

#### • **The Child Protection Bill is a “one-size fits all” policy**

The Bill seems to fail to recognize that families are diverse and each family, and different social and economic factors affect each family differently. For example:

- (i) there may be a family which is suffering economically and is not able to provide “adequate care” for the child/children of the home because the parent has a disability and the disability benefits are not enough to care and provide for themselves and their dependents;
- (ii) there is only one active parent who is financially contributing because the other parent refuses to or is unable to provide for the child, thus the burden falls on one parent;
- (iii) the parent(s) are unemployed and are actively trying to find employment but have not been able to do so;
- (iv) a parent is suffering from the effects of substance abuse or mental health issues and need counselling, therapy, rehabilitation etc.
- (v) a child is suffering from special needs, mental health issues or disabilities and the parent not being trained to handle a child like this and not having the financial resources to seek assistance in the form of training or other counselling, finds it difficult to cope.

Therefore, the Bill instead of providing solutions or other resources to assist with these complex and intricate issues, appears to almost criminalize parents and their actions rather than look at the roots of the issues (such as neglect and abuse).

**Recommendation:** more research needs to be done. Data needs to be collected from at risk families to understand the issues which they are facing so that the legislation can address the “mischief” and not create further problems.

#### • **The language used in Child Protection Bill collectively needs to make it clearer that the removal of a child from his/her home is only to be exercised in the most extreme circumstances.**

Although there is a provision under section 22(3) which states that the removal of a child shall only occur where it is necessary to protect the child from the risk of serious harm or danger, there

are no further provisions which states what factors will be taken into account when deciding when it is “necessary” to remove the child from the home. In fact, there are several provisions which use the term “necessary” which generally is a subjective word. Thus, where there is too much subjectivity, you may have a situation where the law is not being applied fairly, that is, equally. For example, depending on who is the judge or who is the Director of the authority at the time, what is “necessary” may change.

**Recommendation:**

There needs to be a provision or code (attached to the law that can be amended as relevant through the authority responsible for children) which outlines the factors that will be taken into account when determining what is “necessary”. Therefore, the subjective term “necessary” will become more objective. The point is that the decision maker needs clear guidelines or scenarios when exercising his/her discretion.

• **The Child Protection Bill makes offences triable summarily**

This means that magistrate courts and the magistrates will be further burdened with work. It was recently reported at the Criminal Justice Reform Symposium (held at the Hilton Hotel in 2023) that magistrate courts are dealing with a backlog of 16,000 criminal cases, which does not encompass new and active cases. Therefore, the fact that the legislation is giving magistrates more work is problematic. It is even more disastrous in a situation where the systemic failures which caused the backlog in the first place have not been addressed, such as:

- (i) Magistrates are still writing notes by long hand;
- (ii) They are operating out of facilities which need renovation and technological improvement;
- (iii) Police are still prosecuting cases who often times do not have the training an attorney-at-law has;
- (iv) “the file” is often not ready leading to several adjournments;
- (v) Magistrates do not have security of tenure which can be discouraging;
- (vi) The pool of magistrates is small

Therefore, this creates a situation where a true child victim of abuse and/or neglect does not get the justice he/she deserves until 8 or 9 years after the crime has been committed. Justice delayed is justice denied.

**Recommendation:**

The legislation should create an independent tribunal tasked with hearing these cases so as to not further burden the system instead of making the offences triable summarily.

- **The Child Protection Bill undermines parental rights and seems to replace the authority of the parent with the authority of the Director**

While we want to encourage rights of children, this exercise must be balanced against the rights of parents. One must not alienate the parent from the child. It must be an exercise carefully dealt with.

**Recommendation:**

There need to be provisions which make it clear that the parent will be included and involved in the decision/ order to remove a child from the home. For example, there needs to be a provision inserted which gives the parent a chance to put forward his/her case/defence; and/or a chance to correct the wrong they are being accused of, if that wrong is not of a most egregious type of abuse.

- **The Child Protection Bill creates foster homes and Child Care Centres**

Anytime you are placing a child in the care of a stranger, you are entering risky or dangerous situations. There are no provisions which creates pre-qualifications for a person who is foster parent/ staff. This creates a potentially hazardous situation where children placed in the care of foster parents and group homes may be sexually assaulted, reaped, abused and neglected. Therefore, you do not want a situation where you are removing a child from a bad situation to a potentially worse one.

**Recommendation:**

The Bill needs to create pre-qualifications including background checks to ensure that the person (stranger) who is caring for these children are mentally sound, qualified, trained and competent to care for these children and do not have ulterior motives such as using the children for a cheque from the state or to abuse the children.

- **Overall, the provisions of the Bill are too wide/general**

Ambiguity creates an opportunity for interpretation. If provisions are left up to interpretation, they can be argued in favour of the perpetrator. Therefore, we do not want a situation where justice has not been served due to a technicality or where there is injustice because the provision is interpreted at the expense of the parent or the child.

**Recommendation:**

- The language in the provisions need to be tightened.
- Leave little room for interpretation.
- Express clearly what needs to be expressed in order to remedy the mischief the Bill is trying to remedy which is child abuse and neglect.

## B. Specific Comments

### I. Part I, Section 2: Interpretation Section

#### a. “care responsibility”

“*care responsibility*” is defined in the Bill as the authority of the Authority to consent to medical treatments not involving surgery and involving surgery that a medical practitioner certifies in writing needs to be carried out as a matter of urgency and in the best interest of the child.

There is no express provision which considers parental rights as pertaining to medical treatment. Therefore, as it stands parents may have no say on what is to be determined as the “*best interest*” for their child. This definition may allow for the sole opinion of a medical professional (doctor, psychologist, etc.) not accounting for parental rights even in circumstances where intrusive methods such as surgical procedures may be imposed which may not only be detrimental in the long run, but also risky, harmful and which the child could later regret.

#### Recommendation

This definition should be amended to ensure that Parental rights are considered by the insertion of a *proviso* which expressly states that parents/guardians should be consulted prior to the determination of the implementation of medical treatments and only in circumstances where it is not reasonable to do so, would the said right to a consultation be waived.

#### b. “child in need of care and protection”

“a child is in need of care and protection” is defined by section 5 of the Bill as a child in need of care and protection where the child: (c) has suffered harm caused by (ii) the failure of a parent to (B) *adequately supervise and protect the child*”; or (h) suffers from a *mental, emotional*, physical or developmental condition that requires treatment to cure, prevent or ameliorate the effects of the condition or harm suffered and the parent (i) does not, or refuses to, obtain treatment; or (ii) is unable or unavailable to consent to services or treatment to remedy or ameliorate the effects of the condition or harm suffered by the child”.

Section 5(c)(ii)(B) does not create a standard to what “adequacy” will objectively be measured against. This causes issues in situations where for example, parents leave their 16-year-old child unattended at home for periods of time due to them having to work as is often the case in Barbados. Laws must be reflective of socio-economic factors present in a society.

In Section 5(h), as it pertains to the mental issue, the existence of mental health conditions that require proper diagnosis and treatment are acknowledged, however the Bill should address the need for such condition to be diagnosed by psychiatric or other specialists. With respect to the “emotional condition” clause, consideration could be given to remove this as a fulsome definition

of “mental conditions” should be broad enough to cover emotional conditions such as depressive or bipolar disorders.

**Recommendation:**

Consider amending this section to eliminate the reference to “emotional” and include, “Mental conditions referred to under this section refers to disorders duly diagnosed by medical professionals”.

**c. “emotional abuse”**

“*emotional abuse*” is defined in the Bill as:

*“(a) any act by a perpetrator which causes **psychological pain or injury** to a child or is likely to cause significant harm to the welfare or development of the child; and (b) includes harassment, the use of threatening words or behavior’*

The term “*emotional abuse*” in the Bill could be problematic in circumstances where an objective threshold is not established to assist the relevant body/authority in determining whether a complaint is serious enough to warrant state intervention.

**Recommendation:**

Consider amending the definition to provide for supporting manuals/codes to determine what is emotional abuse and whether a complaint is serious enough for intervention.

**d. “neglect of a child”**

The definition of “*neglect of a child*” focuses on acts, omissions or failures of a parent with respect to the child, but within the definition of “parent”, it expressly excludes “a person acting as a care giver on behalf of the Director or the Director”.

This exclusion potentially pre-emptively exonerates any responsibility of bureaucrats (the Director or anyone on behalf of the Director) from any child neglect. This should be addressed considering that neglect (not only abuse) can happen anywhere, also in child care centers (as defined by the bill).

Further, the definition criminalizes the failure of a parent of a child to provide the child with adequate care and guidance which can be highly problematic as it can include families that do not have enough financial means to care for a child.



**Recommendation:**

The economic climate should be considered when drafting such a provision as the current cost of living affects many lower income and middle class families. Currently, there are children being raised by single parents who although they are doing their very best, are still failing to “adequately care” for their children/ child. Additionally, the Bill does not provide a definition for what amounts to “adequate care”. Therefore, two pertinent issues are raised which should expressly be addressed, in the Bill namely: (i) who determines what is satisfactory or acceptable; in respect of care and guidance and (ii) what factors should be considered in determining the same.

**e. “sexual abuse”**

“sexual abuse” is defined as:

*‘(a) the performance by a perpetrator of a sexual act on a child by the use of force, threats, fear, manipulation or guile; (b) includes (i) grooming for the purpose of sexual exploitation, pornography, sexting or cyber abuse; (ii) sexual harassment; (iii) the actual or attempted commission of any of the offences stated in Part I of the Sexual Offences Act, Cap. 154;’*

It appears that there is an omission of sexual acts on a child committed through “seduction”, which may provide broader coverage than “*manipulation or guile*”. It seems entirely probable that a child may be enticed into sexual conduct by acts which may not strictly fall within the definition of guile or manipulation, especially in circumstances where the Bill defines “child” as including all persons under the age of 18.

**Recommendation:**

Consider amending the definition to include “seduction” as a mode of sexual abuse so as to broaden the acts which can be considered as sexual abuse and widen the protection afforded to children.

**f. Section (3)(1)(e)**

This section states that the purpose of the Act shall be to ensure that the best interest of the child is given paramount consideration in all matters.

**g. Section (3)(2)**

In determining what is in the best interest of the child, it mentions ten things that should be considered, being one of those the “the capacity of a parent to properly discharge his parental responsibility”. Consider including a sub-section which states where ‘appropriate’, the view of the parent, given that at times parents may be the perpetrators of abuse.

**h. Section (5)(1)**

This section states that “*a child is in need of care and protection where the child: (...) (h.) suffers from a mental, emotional, physical or developmental condition that requires treatment to cure, prevent or ameliorate the effects of the condition or harm suffered and the parent (i) does not, or refuses to, obtain treatment; or (ii) is unable or unavailable to consent to services or treatment to remedy or ameliorate the effects of the condition or harm suffered by the child*”.

It enables the State to intervene in those instances when a parent does not consent to any “treatment” for any “mental or emotional” “condition” that the child might want. Potentially, it does not give the parents a possibility to justify the refusal to medical treatment.

**Recommendation:**

Consider amending this section to ensure that parents can register or have their views consulted. This section should be amended to ensure that this only applies in situation of life or death.

**i. section 7(5)**

This section states that “*where the views of the child differ from the position of the Director, the child may, within 30 days of the notification of the position, appeal to a Judge in chambers.*” This section is intended to recognize the independence of the child. This is good at a certain point, and such independence should naturally depend on the age and maturity of the child (circumstances that it is not mentioned in the Bill).

The wording appears to exclude the parents (guardians or close relatives).

**Recommendation:**

Consider amending this subsection to provide balance by including a further subsection which gives parents the same right to appeal where their views differ from the position of the Director.

**j. Part II, Section 9: Administration and the Powers and Duties of the Authority**

Some limitations should be included to avoid abuse of powers as this section affords the Authority wide and discretionary powers.

a. “(l) take all necessary steps to prevent children from suffering abuse or neglect”.

**Recommendation:** Consider adding “*within the scope of its powers in accordance with this Act*”. This provision actually appears to overlap with subsection (q).

- b. “(c) remove a child from his home... where it is shown that the child is in danger”. The removal of a child should only be admissible where there are reasonable grounds for the Authority to consider that the child is in imminent danger to his life or physical integrity. When this is the case, the removal of the child ought to be reported to the courts of law with jurisdiction over the matter, within 24 hours, so that the removal can be reviewed, and the Authority be required to provide compelling evidence of the need to interfere with parental rights in the case or rescind the removal. The heightened protection makes sense considering the combined pull of fundamental rights in such cases. It is not only the case that the State is interfering with the privacy of the home and the family, but is equally interfering with parental rights, all of which are protected human rights. Such interference requires a showing of necessity and proportionality, at least.

**Recommendation:** This subsection could be reinforced by making explicit that it will be governed by the rules set out in section 31, where the Bill demands that the Director present the child to court within the 24-hour window.

- c. “(n) inspect a place or premises where a child resides”. As with the prior comments, here there is an intrusion into the family premises.

**Recommendation:** Consider amending by adding the following: “*The inspection will require the consent of the homeowners. If, such consent is withheld, the Authority will require a search warrant, unless there are reasonable grounds to believe that the immediate inspection is necessary to safeguard to life or physical integrity of the child or children, at which point the Authority can enter only to inspect the place or premises where the child resides only for purposes of safeguarding the child and no other reason*”

**k. section 23(2)**

This section could potentially be problematic, as it may interfere with parental rights. The “arrangement of assistance” needs to be explicitly voluntary for parents and children to avoid the undue intrusion of the Authority into the family unit.

**Recommendation**

Consider making it clearer that the Authority on request by parents, carers, or guardians can provide counseling and mediation services to families, but such requests cannot be held against the parents, carers or guardians if a case emerged where the Authority has to intervene to remove a child. The point is to promote the Authority as a service provider than can assist families, but families have to comfortable to use the services without that being used as evidence for example in some later case or intervention.

## **I. Section 23(6)**

To remove an “unruly” child appears somewhat disproportionate, without evidence of the child committing a legal offence. Such a hypothesis would not justify the removal of a child against the wishes of parents, and instead should be cause for support to parents in their efforts to guide and control their child.

**Recommendation:** Consider clarify this section and the term ‘unruly child’.

### **Conclusion**

We laud any efforts update the law to protect children. We however, believe that the Bill needs work and attention should be given to the issues the DLP and other stakeholders have raised in trying to make the Bill better for our children.

**AMENDMENTS TO  
THE BILLS**



**JOINT SELECT COMMITTEE (STANDING)**  
**AMENDMENTS TO THE CHILD PROTECTION BILL, 2023 (CPB)**

NO.	LEGISLATIVE PROVISIONS	RECOMMENDATIONS	AMENDMENTS MADE BY CPC
1			The Child Protection Bill received a year update.
2	<p><b><u>LONG TITLE:</u></b></p> <p><i>“An Act to make provision for the reform of the law on the care and protection of children.”</i></p>	<p>CPC noted the recommendation to make an amendment to the Long Title so that there would be more clarity.</p> <p><b>“Objects and Reasons” Clause</b> reflected the Long title and should now read: <i>“The Bill makes provision for children in need of care and protection.”</i></p>	<p>The Objects and Reasons clause was amended as follows:</p> <p><b>OBJECTS AND REASONS</b></p> <p>This Bill makes provision for the reform of the law in relation to a child who is in need of care and protection.</p> <p>The Long title was amended as follows:</p> <p>An Act to make provision for the reform of the law in relation to a child who is in need of care and protection.</p>
3	<p><b><u>PART I: PRELIMINARY</u></b></p> <p><b>Clause 2, “Interpretation”</b></p> <p>The term “child care centre”</p> <p>The term “financial abuse” means the exercise of control by a perpetrator over a child’s access to financial resources through coercion, deception or intimidation, the effect of which is</p>	<p>It was recommended that the term “child care centre” throughout the Bill to be changed to “Child Protection Facilities”.</p> <p>CPC stated that this would be possible once approval is given by the parent Ministry.</p> <p>CPC recommended that the definition of “financial abuse” would be expanded to include certain concepts such as identity</p>	<p>The term “child care centre” was retained because the Ministry of People Empowerment and Elder Affairs hereinafter referred to as MPEA determined that the change of ‘Child Care Centres’ to ‘Child Protection Facilities,’ would constitute a conflict with regard to the likely retention of Day Care Centres for children aged 0-3 years, notwithstanding the provision within the Second Schedule under ‘Day Nurseries’.</p>





3 (cont'd)	<p><i>to hinder the ability to maintain a child and includes withholding the financial support necessary to maintain a child;"</i></p>	<p>theft, earnings, inheritance, or sums that are to be given for the benefit of the child. As a result, the definition of "abuse" would be amended.</p>	<p>As it stands, a proper reading of Clause 53 empowers the Minister to grant approval for "Child Care Centres". The term 'Child Care Centres' can accommodate both the concept of child protection and day care facilities.</p> <p>It is felt that in the event that some day care facilities remained under the auspices of the Ministry, it would be preferable for the broader terminology of 'Child Care Centre' to be retained.</p>
<p>The term "physical abuse" means any act or omission by a perpetrator which causes pain or injury to the body of a child and includes bullying;"</p>	<p>It was recommended that an amendment be made to the definitions of "physical abuse" and "verbal abuse" to exclude the words, "or omission" and "silence".</p> <p>It was agreed that the words "or omission" would be deleted from the definition. However, the new definition for "omission" was flagged as it was a policy direction to be reverted to by CPC.</p> <p>It was recommended that "silence" would be removed from the definition and addressed separately as a form of abuse.</p>	<p>The definition of the term "physical abuse" was amended to delete the words "or omission".</p> <p>The definition of the term "verbal abuse" was amended to delete the word "silence".</p> <p>CPC and MPEA agreed that the definition of "non-verbal abuse" was unnecessary.</p>	



3 (cont'd)	<p>The term “verbal abuse”, (a) means the use of derogatory or negative language or communication to harm, manipulate, or control another person, whether communicated by silence, damaging gossip, and other passive-aggressive behaviours; and (b) includes shouting, insulting, intimidating, threatening, shaming, demeaning, or name calling.”</p>	<p>A new definition for “Non-verbal abuse” was proposed but CPC flagged “silence” to be reverted to after consultation with the stakeholders and the Ministry.</p>	
4	<p><b>Clause 3, “Purpose”</b></p> <p><b>Clause 3(1), “The purpose of this Act shall be to”</b></p>	<p><b>Clause 3</b> was amended and <b>Clause 3(1)(c)</b> should now read: “provide for a child in need of care and protection in accordance with section 5”.</p> <p>However, it was decided that with regard to deleting or rearranging the paragraphs under <b>Clause 3(1)(a)(i)-(iii)</b> and <b>(b)-(e)</b> the parent Ministry would have to make that decision.</p>	<p>Clause 3 was redrafted to shift the compliance with International Conventions to subsection (d).</p>
5	<p><b>Clause 5, “Child in need of care and protection”</b></p> <p><b>Clause 5(1), “A child is in need of care and protection where the child, (e) has been abandoned or deserted by his parent”.</b></p>	<p>It was proposed that a timeframe for desertion should be included in the legislation. This was identified as a policy issue and should be decided on by the parent Ministry.</p>	<p>MPEA determined that to provide a settled timeframe for desertion under this Bill would be to deny many deserving cases their proper attention. The necessary timeframe will alter according to circumstances, and it is best left to the Court/Judiciary to determine the appropriate length of time for the desertion to be adjudged as such, e.g., in the case of a fit and healthy child – a mature minor</p>



5 (cont'd)			<p>between the ages of 15-18 years. The lapse of time would be far different as against a child with limited capacity, such as a child with a disability or a child requiring special medication at a particular time or indeed a baby. The Bill cannot go into these specifics but if necessary, subsidiary legislation may address this in due course.</p>
6	<p><b>Clause 5(f), "has been exposed to danger, moral or otherwise;"</b></p>	<p>The word "moral" was removed but was a policy issue which would be communicated to the parent Ministry.</p>	<p>Clause 5(f) was amended by deleting the word "moral".</p>
7	<p><b>Clause 5(h)(i), "does not, or refuses to, obtain treatment; or"</b></p>	<p>In the circumstances whereby a child was hospitalized, clarity was needed on the responsibility of the Queen Elizabeth Hospital and the Child Care Board. Consideration should be given within the context in which the State would intervene based on care and protection of the child. If another actor was needed, a decision would have to be made by the parent Ministry.</p>	<p>MPEA determined that there could hardly be a rational basis for seeking to require approval from a third actor since this would, of necessity, be from the very parent or caregiver who refuses or neglects to secure treatment for the child.  MPEA noted further that the inclusion of a requirement for a third actor would further exacerbate the child's condition and negate the State's attempt to care for such an at risk child.</p>



<p>8</p>	<p><b>Clause 5(1)(m)</b>, “has been determined by the court to be in need of care and protection pursuant to section 39 of the Child Justice Act, 2023 (Act 2023-).”</p>	<p><b>Clause 5(1)(m)</b> should now reference “section 40 of the Child Justice Act, 2023 (Act 2023-).” instead of “section 39”.</p>	<p>Clause 5(1)(m) was amended to delete the reference to “section 39 of the Child Justice Act, 2024 (Act 2024-.)” and the words “section 40 of the Child Justice Act, 2024 (Act 2024-.)” Were substituted.</p>
<p>9</p>	<p><b>Clause 7</b>, “Participation of a child”</p> <p><b>Clause 7(4)</b>, “A child shall be entitled to legal representation by an attorney-at-law in any proceedings or hearings in relation to the child.”</p>	<p>It was recommended that a provision should be made for an Attorney-at-Law to be paid by the State, that is, <i>via</i> legal aid was accepted.</p> <p>CPC proposed that consequential amendments to the Community Legal Services Act, Cap. 112A would be provided for in the Second Schedule of the Bill so that proceedings of CLSA would be included under the CPB and provisions would be made for payment to the attorney-at-law.</p>	<p>Part II of the <i>First Schedule</i> to the <i>Community Legal Services Act</i>, Cap. 112A was amended to make provision for an Attorney-at-Law to be paid by the State where there are proceedings or hearings in relation to the child.</p> <p>Please see the <i>Second Schedule</i> to the <i>Child Protection Bill</i> for the aforementioned amendment.</p>
<p>10</p>	<p><b><u>PART III: INTERVENTIONS, REPORTS AND INVESTIGATIONS</u></b></p> <p><b>Clause 24</b>, “Mandatory Reporting”</p> <p><b>Clause 24(1)</b>, “This section shall apply to...”</p> <p><b>Clause 24(5)</b>, “Nothing in this section abrogates any attorney-client privilege.”</p>	<p>“Mandatory reporting” as set out in <b>Clause 24(1)</b> and <b>Clause 24(5)</b> which addresses “attorney-client privilege”, the issues were: 1) to delete “medical practitioner” and to extend the exception to privilege to doctors and to Catholic priests and 2) to include the confessional seal.</p> <p>It was recommended that these issues should be referred to and properly ventilated at policy level.</p>	<p>MPEA indicated that there has been no recorded objection to mandatory reporting from Medical Practitioners; either by way of submission to the Committee or at stakeholder events with BAMP, their representative body. These have been held periodically on this very subject since 2014-2015 to present date. Indeed, BAMP has repeatedly sought guidance on the issue as required under their own Medical Profession Act, 2010 and Code of Conduct 2015 (Barbados Medical Council), both of which</p>





<p>10 (cont'd)</p>	<p>envisage that doctors will, in certain circumstances, make such reports. These documents provide that a doctor may provide information with impunity, as required by law, in order to exercise the vigilance demanded by their profession.</p>	
	<p>The Child Care Board can attest to the volumes of reports they receive both currently and historically from doctors. Of all the professionals who work with and for children, it has always been recognized that medical practitioners are the ones most likely to report what they observe and/or suspect to be child abuse and this was even before they were mandated to do so.</p>	
	<p>The present contention by the Bar Association is therefore somewhat surprising.</p> <p>To adopt an exemption for Catholic Priests could constitute the thin end of the wedge: The Bill does not specify any sect, so to create the exemption would necessitate the removal of 'religious from the categories of persons required to report.</p>	



<p>10 (cont'd)</p>	<p>It is submitted that this will make the exemption of all religious personnel far too broad and possibly quite controversial. On the other hand, to single out Catholic priests would likewise be problematic.</p>	<p>It is submitted that this will make the exemption of all religious personnel far too broad and possibly quite controversial. On the other hand, to single out Catholic priests would likewise be problematic.</p>	<p>Clause 29(6) was amended as follows:</p> <p>“(6) Where a care plan is developed pursuant to subsection (2) (b) that care plan shall be signed by the parent of the child who is the subject of the care plan.”</p>
<p>11</p>	<p>The Committee agreed to the insertion of the word “care”.</p> <p>Clause 29(6) should now read: “Where a care plan is developed pursuant to subsection (2)(b) that care plan shall be signed by the parent of the child who is the subject of the care plan.”</p>	<p>Clause 29, “Action taken by Director”</p> <p>Clause 29 “(6)Where a care plan is developed pursuant to subsection (2)(b) that care shall be signed by the parent of the child who is the subject of the care plan.”</p>	<p>Clause 29(6) was amended as follows:</p> <p>“(6) Where a care plan is developed pursuant to subsection (2) (b) that care plan shall be signed by the parent of the child who is the subject of the care plan.”</p>
<p>12</p>	<p>It was recommended that a provision be made for the creation of a Secure Treatment Facility which will care to children with “extreme behaviours”.</p> <p>CPC noted that to introduce catering for children with “extreme behaviours” was a new limb. Additionally, Clause (5) and Clause 33 would have to be amended. However, this would be another policy decision.</p>	<p><b><u>PART IV: CARE AND PROTECTION ORDERS</u></b></p> <p>Clause 33, “Residential protection and treatment centre order”</p> <p>Clause 33(1), “Where the court is satisfied that a child is brought before it is ...”</p>	<p>The CPC and the MPEA determined that a provision for the establishment of a secure treatment facility within the Bill is unnecessary.</p> <p>The provision of a Residential Protection and Treatment Order gives rise to the establishment of such a centre and can and should be dealt with by way of subsidiary legislation which will provide for the implementation of the Bill. There is also no need to extend the definition of ‘care and protection’ to</p>



12 (cont'd)	<p><b>Clause 33(1)</b> “(c)in need of care and protection pursuant to section 39 of the Child Justice Act, 2023 (Act 2023- )”</p>	<p><b>Clause 331(1)(c)</b> should now reference “section 40 of the Child Justice Act, 2023 (Act 2023- ).” instead of “section 39”.</p>	<p>include children with “extreme behaviours”. Without using such vague and obscure language, the Bill amply provides for this cohort. We would refer you to the Clause 5 (j).... ‘is a child beyond the control of his parent’ and Clause 5(k) ..... ‘is a child who is a threat to himself or to others’.</p> <p>Also to clause (33) (b).... “a significant threat to themselves or others....”</p>
13	<p><b>Clause 38</b>, “Care plan”</p> <p><b>Clause 38(1)</b>, “The court shall not make a final order for the removal of a child from the care and protection of his parent or allocation of parental responsibility in respect of the child unless the court has considered a care plan.</p>	<p>The recommendation to include a reference to a psychologist or a psychiatrist was taken into consideration but would have to be a policy decision made by the parent Ministry.</p>	<p>MPEA indicated that the referral to a psychologist or psychiatrist for every care plan is excessive. It is acknowledged that this may sometimes be necessary, but it is also the case that this is routinely done by Child Care Officers as the nature of the case demands.</p> <p>In any event, since the Court is the final arbiter, it will decide whether such expert evidence is required and will summon it as necessary; this is the established norm in most jurisdictions of similar capacity.</p>
14	<p><b>Clause 42</b>, “Custody care order”</p> <p><b>Clause 41(1)</b>, “Where the Director assesses that...”</p>	<p>The recommendation was that “custody” and “care” were two separate concepts. CPC proposed that they should be defined separately.</p>	<p>MPEA has been advised that a ‘custody care order’ in the context of the language of this Bill does not offend any legal concepts. It has to be read within its context and this formulation has to do with custody being descriptive of the care order, and</p>



14 (cont'd)	Hence, an insertion of a new definition for "custody care order" after the definition of "court" – "custody care order" means an order made under Section 42".	not representing two separate elements.
15	<p><b><u>PART V: CHILD CARE CENTRES</u></b></p> <p><b>Clause 53</b>, "Approved child care centres"</p> <p><i>"The Minister may grant approval for child cares in accordance with such regulations as may be prescribed."</i></p>	<p>Clause 53 was amended as follows:</p> <p>"53. The Minister may grant approval for child care centres in accordance with such regulations as may be prescribed."</p>
16	<p><b>Clause 54</b>, "Purpose of approved child care centre"</p> <p><b>Clause 54(2)</b>, "The staff of the approved child care service and the Director shall assist the child to become reunited with his parent."</p>	<p>Clause 54(2) was amended as follows:</p> <p><i>"(2) The staff of the approved child care centre and the Director shall assist the child to become reunited with his parent."</i></p>
17	<p><b><u>PART VII: MISCELLANEOUS</u></b></p> <p><b>Clause 68</b>, "Repeal and savings"</p> <p><b>Clause 68(1)</b> "(b) the Prevention of Cruelty Act, Cap. 145".</p>	<p>Clause 68(1)(b) was amended to delete the words "Prevention of Cruelty Act, Cap. 145" and the words "Prevention of Cruelty to Children Act, Cap. 145" were substituted.</p>





18	<p><b><u>FIRST SCHEDULE</u></b>  <b><u>(Constitution and Procedure of the Child Protection Board)</u></b>  <b>Paragraph 2, “Temporary appointment of Board”.</b></p>	<p>In the <b>Paragraph 2 “of Board”</b> was deleted and should now read: <b>“Temporary appointment”</b>.</p>	<p>The Shoulder note of paragraph 2 of the <i>First Schedule</i> to <i>Child Protection Bill</i> was amended to delete the words <b>“of Board”</b>.</p>
19	<p><b><u>SECOND SCHEDULE</u></b>  <b><u>(Consequential Amendments)</u></b></p>	<p>CPC reminded that the Second Schedule of the Bill will be amended to include an amendment to the Community Legal Services Act, Cap. 112A.</p>	<p>Part II of the <i>First Schedule</i> to the <i>Community Legal Services Act</i>, Cap. 112A was amended to make provision for an Attorney-at-Law to be paid by the State where there are proceedings or hearings in relation to the child.</p> <p>Please see the <i>Second Schedule</i> to the <i>Child Protection Bill</i> for the aforementioned amendment.</p>

Amendments made by CPC column inserted by CPC(Ag.) S. R. Belle. -2024-02-15



**JOINT SELECT COMMITTEE (STANDING)  
AMENDMENTS TO THE CHILD JUSTICE BILL, 2023 (CJB)**

<b>NO.</b>	<b>LEGISLATIVE PROVISIONS</b>	<b>RECOMMENDATIONS</b>	<b>AMENDMENTS MADE BY CPC</b>
1			The Child Justice Bill received a year update.
2	<p><b><u>PART V: INITIAL INQUIRY AND DIVERSION</u></b></p> <p><b>Clause 33</b>, “Decision regarding diversion”; <b>Clause 34</b>, “Purposes of Diversion”; <b>Clause 35</b>, “Child to be considered for diversion under certain circumstances”; <b>Clause 36</b>, “Levels of diversion options”; <b>Clause 37</b>, “Minimum standards applicable to diversion and diversion options”; <b>Clause 38</b>, “Failure to comply with diversion direction” and <b>Clause 39</b>, “Development of diversion options”</p> <p><b>Clause 34</b>, “Purposes of Diversion”</p> <p><b>Clause 34 (g)</b> <i>prevent stigmatizing the child and the adverse consequences flowing from being subject to the criminal justice system; and</i></p> <p><b>Clause 34 (h)</b> <i>prevent the child from having a criminal record.”</i></p> <p><b>Clause 38</b>, “Failure to comply with diversion direction”</p> <p><b>Clause 38(1)</b>: <i>“Where a child fails to comply with a diversion option, a magistrate shall, on being notified of such failure in the prescribed manner, issue ... (b) “a written notice to the child to appear before a magistrate”.</i></p>	<p>The policy and process of diversion within the criminal justice system and more specifically within the CJB was a concern.</p> <p>The Committee agreed that the parent Ministry should consider that there may be some validity in examining another model to effect diversion.</p> <p>It was further recommended that <b>Clause 34(g)</b> and <b>(h)</b> be brought to the attention of the parent Ministry so that further decisions could be made relative to the mechanism of Diversion.</p> <p>In relation to the language of <b>Clause 38(1)(b)</b> it was agreed that CPC would modify it so that it is clearer as to the responsibilities with the inclusion of references to confer back to earlier provisions.</p>	<p>Clause 38(b) amended as follows: “(b) a written notice to the parent to have the child appear before a magistrate.”</p>



NO.	LEGISLATIVE PROVISIONS	RECOMMENDATIONS	AMENDMENTS MADE BY CPC
3	<p><u>PART VI: COURT PROCEEDINGS</u></p> <p><b>Clause 42</b>, "Conduct of proceedings relating to Child in Court"</p> <p><b>Clause 42(1)</b> ending, "<i>in a manner that can be understood by a child.</i>"</p>	<p>At the end of <b>Clause 42(1)</b> the bold font would be removed by CPC.</p>	<p>The bold font was deleted.</p>
4	<p><u>PART X: SECURE RESIDENTIAL FACILITY</u></p> <p><b>Clause 68</b>, "Secure residential facility"</p> <p><b>Clause 68(a)(iv)</b>, "<i>reception and rehabilitation of a child who has been sentenced to a term of imprisonment under this Act; and</i>"</p>	<p>In relation to the words, "<i>a term of imprisonment</i>", CPC agreed to soften the language and it would therefore read "<i>a term of detention</i>" rather than "<i>imprisonment</i>".</p> <p><b>Clause 68(a)(iv)</b> should now read: "<i>reception and rehabilitation of a child who has been sentenced to detention under this Act</i>".</p>	<p>Clause 68(a)(iv) was amended to remove the word "imprisonment" and substitute therefor the word "detention".</p>
5	<p><b>Clause 86</b>, "Misconduct"</p> <p><b>Clause 86(1)</b>, "<i>No child detained in a secure residential facility shall...</i>"</p>	<p>The provisions of the entire Clause did not speak to a scenario where a child who is in a secure facility, injures, maims or kills a member of staff. It was agreed and the Bill did not speak to compensation for injury and so on. CPC committed to addressing such issues with the parent Ministry.</p>	<p>This matter can be pursued under the existing law relating to personal injury.</p>
6	<p><b>Clause 87</b>, "<i>Power of the Director to impose discipline on a child in a secure residential facility</i>".</p> <p><b>Clause 87</b> "<i>(1) Corporal punishment, severe or frightening measures shall not be inflicted on a child in a secure residential facility</i>".</p>	<p>In <b>Clause 87(1)</b>, the words "<i>severe or frightening measures</i>" would be defined in <b>Clause 2</b>.</p>	<p>CPC and the Ministry of Home Affairs agreed that <b>Clause 87(1)</b> would be amended to delete the words "<i>severe or frightening measures</i>" and substitute the words "cruel, inhuman or degrading measures" which mirrors the amendment made to the <i>Child Protection Bill</i> as determined by the MPEA.</p>



NO.	LEGISLATIVE PROVISIONS	RECOMMENDATIONS	AMENDMENTS MADE BY CPC
7	<p>Clause 92, "Discharge approval by Minister"</p> <p><i>"The Minister may approve the discharge of a child from a secure residential facility on application made to him in writing where that child has served two-thirds of his sentence or term of the order or the custodial portion of the sentence made by a magistrate or judge."</i></p>	<p>It was agreed that there needed to be some clarification in relation to who had the authority to make the application to the Minister and to reconsider the Minister's powers.</p> <p>CPC identified this as a policy decision and needed to be referred to the parent Ministry.</p>	<p>CPC and the Ministry of Home Affairs agreed section 92 would be redrafted as follows:</p> <p><b>"Discharge approval by Minister"</b></p> <p>92. The Minister may, on consultation with the Director, approve the discharge of a child from a secure residential facility on application made to him in writing by an appropriate adult, attorney-at-law representing the child or a parent where that child has served two-thirds of his sentence or term of the order or the custodial portion of the sentence made by a magistrate or judge."</p>
8	<p><b><u>FOURTH SCHEDULE</u></b></p> <p><b>Paragraph 6, "First meeting"</b></p> <p><i>"The First meeting of the Child Justice Board shall be held at one of the secure residential facilities not later than one month after all the members of the Child Justice Board have been appointed."</i></p>	<p>It was recommended that <b>Paragraph 6</b> be deleted which would cause consequential change or renumbering going forward.</p>	<p><b>Paragraph 6</b> of the <i>Fourth Schedule</i> was deleted. The paragraphs in said <i>Schedule</i> were renumbered.</p>
9	<p><b><u>FIFTH SCHEDULE</u></b></p> <p><b>Paragraph 7, "Minutes"</b></p> <p><i>"The Reintegration Board shall submit the minutes of the meetings of the Reintegration Board to the Minister as soon as possible after they have been approved by the Reintegration Board"</i>.</p> <p>Amendments made by CPC column inserted by CPC(Ag.) S. R. Belle. -2024-02-15</p>	<p>The Committee recommended that <b>Paragraph 7</b> be redrafted by CPC to include a two-week timeline for the submission of the Minutes of the meetings of the Reintegration Board.</p>	<p><b>Paragraph 7</b> of the <i>Fifth Schedule</i> was amended as follows:</p> <p><b>"Minutes"</b></p> <p>7. The Reintegration Board shall submit the minutes of the meetings of the Reintegration Board to the Minister within two weeks after they have been approved by the Reintegration Board."</p>





# **NEW BILLS**



**CHILD  
PROTECTION  
BILL, 2024**



2024/02/15

**OBJECTS AND REASONS**

This Bill makes provision for the reform of the law in relation to a child who is in need of care and protection.

*Arrangement of Sections*

**PART I**

**PRELIMINARY**

- 1. Short title**
- 2. Interpretation**
- 3. Purpose**
- 4. Principles to be applied in the administration of the Act**
- 5. Child in need of care and protection**
- 6. Request for services from other agencies**
- 7. Participation of a child**

**PART II**

**ADMINISTRATION**

- 8. Establishment of Authority**
- 9. Powers and duties of the Authority**
- 10. Establishment of Board**
- 11. Remuneration**

12. Director of Child Protection
13. Staff
14. Pension rights and service with Authority
15. Savings of pension etc.
16. Role of the Minister
17. Child Protection Report
18. Funds of the Authority
19. Application of funds
20. Accounts
21. Financial reports

### PART III

#### INTERVENTIONS, REPORTS AND INVESTIGATIONS

22. Intervention
23. Request for intervention
24. Mandatory reporting
25. Investigation of report
26. Records of reports and subsequent action
27. Protection of persons who make reports

- 28. Investigation and assessment
- 29. Action taken by Director
- 30. Decision against taking action
- 31. Removal of child by Director

PART IV

CARE AND PROTECTION ORDERS

- 32. Court orders where child in need of care and protection
- 33. Residential protection and treatment centre order
- 34. Emergency protection order
- 35. Assessment order
- 36. Social inquiry report
- 37. Care order
- 38. Care plan
- 39. Care responsibilities and duties under care order
- 40. Supervision order
- 41. Duties of supervisor
- 42. Custody care order
- 43. Recovery order



44. Compulsory assistance order
45. Support services order
46. Counselling or treatment order
47. Contact order
48. Order to accept undertakings
49. Provision of accommodation
50. Maintenance of children

#### PART V

#### CHILD CARE CENTRES

51. Principles guiding the operation of child care centres
52. Foster care
53. Approved child care centres
54. Purpose of approved child care centre
55. Delegated care responsibility at approved child care centre
56. Contact with parents and relatives
57. Application for a recovery order
58. Order to contribute
59. Corporal punishment in child care centres

PART VI  
OFFENCES

- 60. Unsupervised or unattended child
- 61. Cruelty to children
- 62. Personation
- 63. Obstruction

PART VII  
MISCELLANEOUS

- 64. Exemption from duties and taxes
- 65. Regulations
- 66. Amendment of Schedule
- 67. Savings and transitional
- 68. Repeal and savings
- 69. Consequential amendments
- 70. Commencement

FIRST SCHEDULE

*Constitution and Procedure of the Child Protection Board*

SECOND SCHEDULE

*Consequential Amendments*



**BARBADOS**

A Bill entitled

An Act to make provision for the reform of the law in relation to a child who is in need of care and protection.

ENACTED by the Parliament of Barbados as follows:

PART I

PRELIMINARY

**Short title**

1. This Act may be cited as the *Child Protection Act, 2024*.

**Interpretation**

2. In this Act,

“abuse” includes

- (a) child labour;
- (b) cyber-abuse;
- (c) emotional abuse;
- (d) financial abuse;
- (e) non-verbal abuse;
- (f) physical abuse;
- (g) sexual abuse;
- (h) verbal abuse;

“attorney-at-law” has the meaning assigned to it under section 2 of the *Legal Profession Act, Cap. 370A*;

“assessment” means an assessment performed pursuant to a child assessment order made under section 35;

“assessment order” means an order made under section 35;

“Authority” means the Child Protection Authority established by section 8;

“best interest” means the best interest of the child as described under section 3(2);

“Board” means the Child Protection Board established by section 10;

“care application” means an application for a care order made under section 37;

“care order” means an order made under section 37;

“care plan” means a plan made by the Director under section 38(2);

“care responsibility” means the authority of the Authority to

- (a) consent to the medical treatment not involving surgery for the child on the advice of a medical practitioner;
- (b) consent to the medical treatment involving surgery that a medical practitioner certifies in writing needs to be carried out as a matter of urgency and in the best interest of the child;
- (c) determine the educational needs of the child, including the school or educational institution that the child attends;
- (d) approve travel outside of Barbados;
- (e) correct and manage the behaviour of the child;
- (f) give permission for the child to participate in activities;
- (g) make alternative visiting or contact arrangements that are not provided for in an existing care plan; and
- (h) make any other decisions that are required to be made with respect to the day-to-day care of the child;

“child” means a person who is under the age of 18 years;

“Child Care Board” means the Board established by section 3 of the former Act;

“child care centre”

- (a) means a place
  - (i) where a child is cared for; or
  - (ii) approved by the Minister to provide for the care of a child; and

*(b)* includes

- (i) an assessment centre;
- (ii) a foster home;
- (iii) a children's home;
- (iv) a residential care centre;
- (v) a secure residential treatment centre;
- (vi) a training centre;
- (vii) such other centre;

“child in need of care and protection” means a child referred to in section 5;

“child labour” means any work undertaken by a child which harms or exploits the child whether physically, mentally, morally or prevents him from obtaining academic education or vocational training;

“compulsory assistance order” means an order made under section 44;

“contact order” means an order made under section 47;

“counselling or treatment order” means an order made under section 46;

“court” means

- (a)* the Family Division of the High Court; and
- (b)* the Magistrate's Courts having jurisdiction to hear an application;

“cyber-abuse” includes cyber-bullying, cyber-harrassment and exposure to harmful images by electronic means;

“danger” means physical, sexual, verbal or emotional harm;

“delegated care responsibility” means the authority delegated to a child care centre by the court pursuant to section 39 to

- (a)* consent to medical treatment not involving surgery for the child on the advice of a medical practitioner;



- (b) correct and manage the behaviour of the child;
- (c) give permission for the child to participate in activities; and
- (d) make any other decisions that are required to be made with respect to the day-to-day care of the child;

“Director” means the Director of Child Protection appointed in accordance with section 12;

“emergency protection order” means an order made under section 34;

“emotional abuse”

- (a) means any act by a perpetrator which causes psychological pain or injury to a child or is likely to cause significant harm to the welfare or development of the child; and
- (b) includes harassment, the use of threatening words or behaviour;

“financial abuse” means the exercise of control by a perpetrator over a child’s access to financial resources through coercion, deception or intimidation, the effect of which is to hinder the ability to maintain a child and includes withholding the financial support necessary to maintain a child;

“former Act” means the *Child Care Board Act*, Cap. 381 repealed by section 68;

“guardian” means a person who assumes or has the legal responsibility and authority for making decisions with respect to a child;

“Minister” means the Minister with responsibility for the care, protection and welfare of children;

“neglect of a child” means

- (a) the failure of a parent of a child to provide the child with adequate care and guidance; or
- (b) any other act or omission by the parent with respect to a child that is inappropriate for the child or likely to be harmful to the child;

“non-verbal abuse” the use of non-verbal communication to harm, manipulate or control another person, whether communicated by silence, body-language or any other passive-aggressive behaviours;

“order to accept undertakings” means an order made under section 48;

“parent”

(a) means any person at law liable to maintain a child or entitled to his custody and includes

(i) a child’s birth parent where the child has not been adopted;

(ii) a child’s adoptive parent where the child has been adopted; and

(iii) a child’s guardian;

(b) does not include a person acting as care giver on behalf of the Director or the Director;

“parental responsibility”

(a) means the rights, duties, powers, responsibilities and obligations that by law a parent has in relation to a child; and

(b) does not include the right to consent or withhold consent to the making of an order under the *Adoption Act*, Cap. 212;

“perpetrator” means a person who commits an act of abuse;

“physical abuse” means any act by a perpetrator which causes pain or injury to the body of a child and includes bullying;

“police officer” means a member of the Barbados Police Service;

“recovery order” means an order made under section 43;

“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;

“removal” means the taking of a child and placing the child in the care and protection of the Director in accordance with this Act;

“residential protection and treatment centre” means a centre where a child may be placed to reside pursuant to section 33;

“residential protection and treatment centre order” means an order made under section 33;

“sexual abuse”

(a) means the performance by a perpetrator of a sexual act on a child by the use of force, threats, fear, manipulation or guile;

(b) includes

(i) grooming for the purpose of sexual exploitation, pornography, sexting or cyber abuse;

(ii) sexual harassment;

(iii) the actual or attempted commission of any of the offences stated in Part I of the *Sexual Offences Act*, Cap. 154;

“sexual harassment” has the meaning assigned to it under section 3(1) of the *Employment Sexual Harassment (Prevention) Act, 2017* (Act 2017-21);

“social inquiry report” means the report to be produced pursuant to section 36;

“supervision order” means an order made under section 40;

“support services order” means an order made under section 45;

“verbal abuse”

(a) means the use of derogatory or negative language or communication to harm, manipulate or control another person, whether communicated by damaging gossip, and other passive-aggressive behaviours; and

(b) includes shouting, insulting, intimidating, threatening, shaming, demeaning, or name calling.

**Purpose**

- 3.(1) The purpose of this Act shall be to
- (a) protect a child from abuse and neglect;
  - (b) provide for a child in need of care and protection;
  - (c) promote the welfare of a child;
  - (d) ensure compliance with
    - (i) the United Nations Convention on the Rights of the Child;
    - (ii) the Universal Declaration of Human Rights; and
    - (iii) all other international instruments to which Barbados is a party with special regards to those which afford a child the necessary protection and assistance so that he can assume his eventual responsibilities within the community and for the full and harmonious development of his personality and to grow up in a family environment imbued with happiness, love and understanding; and
  - (e) ensure that the best interest of the child is given paramount consideration in all matters.
- (2) In determining what is in the best interest of the child, the following matters shall be taken into account:
- (a) the safety of the child;
  - (b) the capacity of a parent to properly discharge his parental responsibility;
  - (c) the physical, mental, emotional or psychological needs and development of the child;
  - (d) the appropriate care or treatment required to meet the needs or development of the child;

- (e) where appropriate, the views of the child;
- (f) a secure place for the child;
- (g) the positive development of the child as a member of a family;
- (h) the love affection and ties between the child and other persons in the life of the child;
- (i) the capacity of persons, other than a parent, to exercise custody rights and duties in relation to the child; and
- (j) the continuity of the care for the child and the possible effect of disruption of that care on the child.

**Principles to be applied in the administration of the Act**

**4.** The following principles shall be applied in the administration of this Act:

- (a) the safety and welfare of a child shall be given paramount consideration in all actions and decisions in relation to the child;
- (b) the safety and welfare of a child who has been removed from his parent shall be paramount to the rights of the parent;
- (c) where a child is able to form his own views on a matter concerning his safety or welfare
  - (i) he shall be afforded an opportunity to freely express his views; and
  - (ii) his views are to be given due weight in accordance with his developmental capacity and the circumstances;
- (d) the least intrusive intervention in the life of a child and his family shall be taken in order to
  - (i) protect the child from harm; and
  - (ii) promote the development of the child;

- (e) where a child is temporarily or permanently deprived of his family environment or cannot be allowed to remain in that environment in his best interest
  - (i) the child shall be entitled to special protection and assistance from the Government of Barbados; and
  - (ii) his name and identity shall, where practicable, be kept confidential;
- (f) where a child is removed from the home of his parent under this Act, whether temporarily or permanently,
  - (i) he shall be entitled to a safe, nurturing, stable and secure environment; and
  - (ii) the child may retain relationships with people significant to the child, including his parents, relatives, peers, family friends and community, unless it is contrary to his best interest; and
- (g) where a child is placed in an approved child care centre, arrangements shall be made in a timely manner to ensure the provision of a safe, nurturing, stable and secure environment.

**Child in need of care and protection**

- 5.(1) A child is in need of care and protection where the child
- (a) does not have a parent;
  - (b) does not have a parent who is fit to exercise care or guardianship owing to
    - (i) mental or bodily disease;
    - (ii) infirmity or other incapacity; or
    - (iii) any other circumstances,providing for his up-bringing, and there is no available person or persons capable, fit or willing to undertake the care of such child;

- (c) has suffered harm caused by
  - (i) neglect of a child; or
  - (ii) the failure of a parent to
    - (A) supervise or protect the child; or
    - (B) adequately supervise or protect the child;
- (d) is a victim of abuse or exploitation, has been exposed to abuse or is likely to suffer abuse or exploitation;
- (e) has been abandoned or deserted by his parent;
- (f) has been exposed to danger or otherwise;
- (g) has suffered physical, emotional or psychological harm caused by being exposed to domestic violence by or towards a parent or other person residing with the child;
- (h) suffers from a mental, emotional, physical or developmental condition that requires treatment to cure, prevent or ameliorate the effects of the condition or harm suffered and the parent
  - (i) does not, or refuses to, obtain treatment; or
  - (ii) is unable or unavailable to consent to services or treatment to remedy or ameliorate the effects of the condition or harm suffered by the child;
- (i) is in the custody of the Director or another person and the parent of the child refuses or is unable to resume custody of the child;
- (j) is a child beyond the control of his parent;
- (k) is a child who is a threat to himself or to others;
- (l) is less than 12 years old and has committed acts which would ordinarily constitute an offence as listed in the *Second Schedule* or the *Third Schedule* to the *Child Justice Act, 2024* (Act 2024- ); or

(m) has been determined by the court to be in need of care and protection pursuant to section 40 of the *Child Justice Act, 2024* (Act 2024- ).

(2) A child in need of care or protection may seek assistance from the Director.

**Request for services from other agencies**

6.(1) In promoting or ensuring the safety or welfare of a child, the Director may request a service to a child or the family of a child from the following:

- (a) a government department;
- (b) an agency in receipt of government funding;
- (c) a non-governmental organization; or
- (d) any other person that promotes the care and protection of children.

(2) A government department, an agency, organization or any person to which a request is made under subsection (1), shall use their best endeavours to comply with the request where

- (a) the request is consistent with their own responsibilities; and
- (b) does not prejudice the discharge of their functions.

**Participation of a child**

7.(1) A child shall be entitled to participate in a decision that is likely to have a significant impact on his life.

(2) In order to ensure that a child is able to participate in a decision that is likely to have a significant impact on his life, the Director shall provide the child with the following:

- (a) adequate information in a manner and language that he can understand including
  - (i) the decision to be made;



- (ii) the reasons for the intervention by the Director;
  - (iii) the ways in which the child may participate in the decision making process; and
  - (iv) any relevant complaint mechanisms;
- (b) the opportunity to freely express his views according to his abilities, age, maturity and developmental capacity;
  - (c) any assistance that is necessary for the child to express his views;
  - (d) information as to how the views of the child will be recorded and taken into account;
  - (e) information with respect to the outcome of any decision concerning the child and an explanation of the reasons for the decision; and
  - (f) an opportunity to respond to a decision made concerning the child.
- (3) For the purposes of this section, a decision that is likely to have a significant impact on the life of a child shall include:
- (a) any plan for emergency or ongoing care;
  - (b) the development or review of a care plan in relation to the child;
  - (c) any care application in relation to the child;
  - (d) the provision of counselling or treatment services; or
  - (e) any contact with a parent, relative or other persons connected with the child.
- (4) A child shall be entitled to legal representation by an attorney-at-law in any proceedings or hearings in relation to the child.
- (5) Where the views of the child differ from the position of the Director, the child may, within 30 days of the notification of the position, appeal to a Judge in chambers.

PART II

ADMINISTRATION

**Establishment of Authority**

**8.(1)** There is established an Authority to be known as the Child Protection Authority.

(2) The Authority is a body corporate to which section 21 of the *Interpretation Act*, Cap. 1 applies.

**Powers and duties of the Authority**

**9.(1)** The Authority shall

- (a) provide care, protection and rehabilitation of a child;
- (b) investigate a complaint or report made in relation to a child or the mistreatment of a child;
- (c) remove a child from his home, child care centre or environment where it is shown that the child is in danger;
- (d) monitor the operation of a child care centre and conduct reviews to determine its compliance with any statutory provision;
- (e) issue guidelines to child care centres;
- (f) establish, with the approval of the Minister, policies and procedures respecting all aspects of child care centres;
- (g) provide consultation and direction to relevant authorities respecting child care centres in accordance with this Act;
- (h) provide services and promote the development, adoption and evaluation of policies and procedures that accord with the purposes of this Act;
- (i) promote and safeguard the safety and welfare of a child;

- (j) assess and investigate a complaint or report and provide an assessment of any such complaint or report;
- (k) act as an advocate to promote the rights of children;
- (l) take all necessary steps to prevent children from suffering abuse or neglect;
- (m) promote and facilitate contact between a child and his parent, relative, friend or other person connected with him unless it is not in the best interest of the child or where it is not reasonably practicable;
- (n) inspect a place or premises where a child resides;
- (o) approve any programme or service in relation to the development, rehabilitation or welfare of a child;
- (p) establish procedures for the delegation of its duties and to establish policies respecting the direction and supervision of such delegation;
- (q) exercise such powers as are conferred on it by this Act and as may be necessary with respect to any child so as to serve the best interests of that child;
- (r) make use of such facilities and services available for children that are provided by other agencies or institutions, as appears reasonably necessary to the Authority;
- (s) advise the Minister and other persons on matters relating to child care centres, programmes, facilities and resources necessary to carry out the requirements under this Act;
- (t) report to the Minister
  - (i) the operation and administration of this Act; and
  - (ii) whether or not the purpose and the principles of this Act are being achieved;

- (u)* perform such other functions as may be necessary to carry out the provisions of this Act or as may be determined by the Minister; and
  - (v)* do all such things as may be necessary or expedient for the proper performance of its duties.
- (2) In the course of exercising its powers under subsection (1), the Authority may provide the following services to a child:
- (a)* advice, guidance and counselling;
  - (b)* occupational, social, cultural or recreational activities; and
  - (c)* any other service as may be required for the care and protection of a child.
- (3) In determining what is in the best interest of a child, the Authority shall, in addition to the principles set out in section 3(2), take into consideration the following:
- (a)* the love, affection, and other emotional ties existing between the parties involved and the child;
  - (b)* the capacity and disposition of the parties involved to
    - (i)* give the child love, affection and guidance and to continue the education and raising of the child in his or her religion, if any; and
    - (ii)* provide the child with food, clothing, medical care or other remedial care;
  - (c)* the length of time the child has lived in a stable, satisfactory environment, and the desirability of maintaining the status quo;
  - (d)* where appropriate, preserving the family unit and reuniting the child with his relatives at the earliest opportunity;
  - (e)* the right of the child to the enjoyment of family life;
  - (f)* the right of the child to be heard;
  - (g)* the right of the child to representation and a fair hearing;

- (h) any other relevant support necessary for the well being of the child;
- (i) the permanence of the family unit;
- (j) the home, school and community record of the child;
- (k) the willingness and ability of each parent to facilitate and encourage a close parent-child relationship between the child and the other parent or the child and the parents;
- (l) the willingness and ability of relatives to facilitate and encourage familial relationships between the child and other family members;
- (m) any other form of abuse, regardless of whether it was directed against or witnessed by the child;
- (n) the reasonable preference of the child, if the Authority considers the child to be of an age and maturity to express such preference; and
- (o) any other factor that the Authority may consider relevant to the particular child.

#### **Establishment of Board**

10.(1) There is established a Board, to be known as the Child Protection Board, which shall be responsible for the formulation of the policy of the Authority and for the general administration of the Authority.

(2) The *First Schedule* has effect with respect to the constitution of the Board and otherwise in relation thereto.

#### **Remuneration**

11. The Directors of the Board are entitled to such remuneration and allowances as the Minister determines.

#### **Director of Child Protection**

12.(1) The Board may with the approval of the Minister, appoint a person to be the Director of Child Protection, who shall be an employee of the Authority

at such remuneration and on such terms and conditions as the Minister approves in writing.

(2) The Director is subject to the directions of the Board and is responsible to the Board for the execution and management of the affairs of the Authority.

(3) Notwithstanding the generality of subsection (2) the Director shall have the following duties:

- (a) to promote and safeguard the safety, welfare and well-being of a child;
- (b) to intervene, investigate or prepare reports pursuant to Part III;
- (c) to oversee the operation of child care centres and the delivery of child care services;
- (d) to establish, with the approval of the Minister, policies and procedures respecting all aspects of child care services;
- (e) to provide consultation and direction to relevant authorities respecting child care services in accordance with this Act;
- (f) to establish procedures for the delegation of his duties and to establish policies respecting the direction and supervision of such delegation;
- (g) to make arrangements for and in relation to the placement of a child;
- (h) to take appropriate measures to ensure confidentiality of the records of a child and the parent of a child;
- (i) to issue guidelines to child care services in giving effect to this Act;  
and
- (j) to perform such other functions as may be necessary to carry out the provisions of this Act.

(4) The Director may delegate to a member of staff or to any other person his functions other than his power of delegation under this Act.

**Staff**

13.(1) Subject to subsections (2) and (3), the Board may appoint and employ such officers, agents and servants as it considers necessary for the proper carrying into effect of the provisions of this Act, at such remuneration and on such terms and conditions as the Minister approves in writing.

(2) Notwithstanding subsection (1), no post shall be established and no salary in excess of such amount as the Minister may determine.

(3) Subject to this Act and to the *Statutory Boards (Pensions) Act*, Cap. 384 no provision shall be made for the payment of any pension, gratuity or other like benefit to any person employed by the Authority without the prior approval in writing of the Minister.

**Pension rights and service with Authority**

14.(1) Where a public officer is seconded or temporarily transferred from a pensionable office within the meaning of section 2(1) of the *Pensions Act*, Cap. 25 to perform any service with the Authority, his service with the Authority shall, unless the President otherwise decides, count for pension under that Act as if the officer had not been so seconded or transferred.

(2) Where the services of a person employed by the Authority are on loan to the Government that person is entitled to such benefits and terms of employment as are applicable to the post which he occupies, and the service with the Authority shall be taken into account as continuous service with the Government and the *Pensions Act* and *Pensions Regulations, 1947* shall apply to him as if his service with the Authority were service within the meaning of that Act.

(3) Where a public officer is transferred to the service of the Authority in accordance with subsection (2), the Authority shall refund to the Consolidated Fund all moneys payable as pension in respect of the service of that officer with the Authority.

**Savings of pension etc.**

**15.** Where a public officer who has pensionable service is transferred to or becomes employed in the service of the Authority, his service with the Authority shall, whether or not there was a break in service, be aggregated with his service in the public service and his pension shall be calculated in accordance with the *Pensions Act, Cap. 25* and *Pensions Regulations, 1947* as if all of his service was service in the public service.

**Role of the Minister**

**16.(1)** The Minister shall promote a partnership approach with families, the government, non-governmental agencies, organisations, corporations, business agencies and the community in taking responsibility for and dealing with a child who is in need of care and protection.

(2) In giving effect to subsection (1), the Minister shall

- (a) promote the care of children;
- (b) promote the development of procedures and protocols with families, government, non-governmental agencies, organisations, corporations, business agencies and the community; and
- (c) ensure that these procedures and protocols are implemented and reviewed regularly.

(3) The objects of the procedures and protocols referred to in subsection (2) shall be for the

- (a) care and protection of children;
- (b) provision of support services directed towards strengthening and supporting families; and
- (c) promotion and the development of co-ordinated strategies.

(4) The Minister shall have the power to give the Board directions with respect to a policy.



**Child Protection Report**

- 17.(1) The Authority shall, in respect of every calendar year, submit a report of its proceedings in respect of child care and protection to the Minister.
- (2) The Minister shall cause the report referred to in subsection (1) to be laid before Parliament with any comments he thinks fit.
- (3) The report referred to in subsection (1) shall be published by the Authority after consultation with the Minister.

**Funds of the Authority**

18. The funds of the Authority shall comprise
- (a) such amounts as may be voted for the purpose by Parliament;
  - (b) all amounts payable to or vested in the Authority; and
  - (c) gifts to the Authority from any person, organisation or body.

**Application of funds**

19. The Authority shall apply its moneys for
- (a) the payment of its officers and employees;
  - (b) the maintenance of its child care centres;
  - (c) the making of grants to private child care centres; and
  - (d) such other purposes as are necessary for the performance of its functions under this Act.

**Accounts**

20. The Authority shall keep proper books of account of its revenues, expenditures, assets and liabilities and implement International Accounting Standards and practices in accordance with the accounting standards and standing

instructions issued by the Accountant-General under the *Public Finance Management Act, 2019* (Act 2019-1).

**Financial reports**

21. The Authority shall submit such reports and information as required by Part IX of the *Public Finance Management Act, 2019* (Act 2019-1).

PART III

INTERVENTIONS, REPORTS AND INVESTIGATIONS

**Intervention**

22.(1) The Director may intervene where

- (a) a request for assistance in relation to a child is made to the Director;
- (b) he receives a report that a child is a child in need of care and protection;  
or
- (c) it appears to the Director that a child is in need of care and protection.

(2) In determining the appropriate response to a request for assistance or to a report concerning a child, the Director shall have regard to the following:

- (a) the immediate safety and welfare of the child and any other child in the usual residential setting of the child;
- (b) the age or maturity of the child;
- (c) any disability of the child; and
- (d) the existing circumstances of the family.

(3) The removal of a child from his parents shall only occur where it is necessary to protect the child from the risk of serious harm or danger.

**Request for intervention**

23.(1) A person may seek assistance in the form of an intervention from the Director where

- (a) there is a serious or persistent conflict between a child and a parent of a child of such nature that the safety or welfare of the child is in jeopardy; or
- (b) a parent is unable to provide adequate care, supervision or protection for a child to such an extent that the safety or welfare of the child is in jeopardy.

(2) In responding to a request made under subsection (1), the Director shall consider the appropriateness of providing or arranging such assistance as is necessary to

- (a) enable the child and parent of the child to resolve the conflict without recourse to legal proceedings;
- (b) ensure that the child is adequately cared for, supervised or protected; or
- (c) enable the child and his parent to have access to appropriate services.

(3) In making provision for the receipt of any assistance under subsection (2), the Director shall ensure that the child, if sufficiently mature, has

- (a) been counselled about the assistance necessary to resolve the conflict with his parent; and
- (b) given consent to such assistance.

(4) The Director shall cause a child to be brought before the court where he is of the opinion that, despite the assistance provided under subsection (2), the safety or welfare of the child continues to be in jeopardy.

(5) The Director may apply to the court for any order under this Act.

- (6) On an application by the Director, the court may make a care order vesting care responsibility in the Director where the court is satisfied that
- (a) the child refuses to adhere to the guidance and control of a parent;
  - (b) it is in the best interests of the child; and
  - (c) the parent understands the results which will follow from the making of the order.
- (7) Notwithstanding subsection (5), the court may make any order it thinks fit having regard to the circumstances in relation to the child.

**Mandatory reporting**

24.(1) This section shall apply to

- (a) a parent;
- (b) a medical practitioner, a health practitioner, a dental practitioner, a nurse or mental health practitioner;
- (c) an administrator of a hospital or medical facility;
- (d) a school principal, teacher or other teaching professional;
- (e) a social worker or other social service professional;
- (f) a law enforcement officer;
- (g) an internet provider, film technician, computer technician or telecommunications technician;
- (h) any person who provides health care, welfare, education, religious, child care or law enforcement services, wholly or partly to a child; and
- (i) any other person who by virtue of the nature of their work, owes a duty of care to a child.

- (2) A person listed under subsection (1) who has knowledge or has reasonable grounds to suspect that a child is in need of care and protection shall be under a duty to
- (a) immediately report or cause to be reported the circumstances to the Director or a police officer; and
  - (b) provide the Director or a police officer with such additional information as is known or available to the person.
- (3) Where a person makes a report to a police officer under subsection (2)(a), the police officer shall transmit the report to the Director within 24 hours.
- (4) Subsection (2) shall apply notwithstanding the confidential nature of the information on which the report is based.
- (5) Nothing in this section abrogates any attorney-client privilege.
- (6) A report made under subsection (2) may be made anonymously.
- (7) A person who fails to comply with subsection (2) is guilty of an offence and is liable on summary conviction to a fine of \$20 000 or to a term of imprisonment of 2 years or to both.
- (8) A person who makes a report in good faith shall not be liable for prosecution.
- (9) A person who intentionally makes a false report or provides false or misleading information is guilty of an offence and is liable on summary conviction to a fine of \$10 000 or imprisonment for one year or to both.

#### **Investigation of report**

**25.** Where a report is made under section 24, the Director shall immediately conduct an investigation to determine whether the child is a child in need of care and protection.

**Records of reports and subsequent action**

- 26.(1) The Director shall keep a record of
- (a) all reports made to or by the Director;
  - (b) any action taken in response to a report received under section 24; and
  - (c) any disposition of and dealings with a child to whom the report and action referred to in paragraph (b) relate.
- (2) The record of reports shall be kept
- (a) in physical or digital format; and
  - (b) in accordance with any relevant enactment.

**Protection of persons who make reports**

- 27.(1) Where a person makes a report under section 24
- (a) the making of the report shall not constitute a breach of any professional etiquette or ethics or a departure from any accepted standards of professional conduct;
  - (b) no liability shall be incurred for defamation as a consequence of the report;
  - (c) the making of the report shall not constitute a ground for civil proceedings for malicious prosecution or for conspiracy;
  - (d) the report, or evidence of its contents, is not admissible in any proceedings, other than in proceedings relating to the care and protection of a child in the court;
  - (e) he shall not be compelled in any proceedings to
    - (i) produce the report, a copy of the report or an extract from the report; or
    - (ii) disclose or give evidence of any of contents of the report; and

- (f)* the identity of the person who made the report or information from which the identity of that person may be deduced shall not be disclosed to any person without
  - (i)* the consent of the person who made the report; or
  - (ii)* the leave of the court.
- (2) Where consent is not granted under subsection (1)*(f)*, a party or witness in any such proceedings shall not be asked or required to answer any question that cannot be answered without disclosing the identity or leading to the identification of that person.
- (3) A report made under section 24 shall be admissible in any proceedings relating to the care and protection of a child where the report is certified by the Director.
- (4) The court shall not grant leave under subsection (1)*(f)(ii)* unless the court is satisfied that
  - (a)* the report is of critical importance in the proceedings; and
  - (b)* failure to admit the report would
    - (i)* prejudice the proper administration of justice; or
    - (ii)* prevent the proper investigation of the report.
- (5) Where leave is granted under subsection (1)*(f)(ii)*, the court shall
  - (a)* state the reasons; and
  - (b)* inform the Director that the identity of the person who made the report will be disclosed.

### **Investigation and assessment**

- 28.(1)** The Director shall conduct an investigation and assessment of the circumstances relating to a child where
- (a)* a request for intervention is made under section 23(1)*(a)*;

- (b)* a report is made under section 24; or
  - (c)* where it appears to the Director that a child is a child in need of care and protection.
- (2) Where an investigation and assessment have been undertaken under subsection (1), the Director may determine that
  - (a)* no further action is necessary;
  - (b)* a further investigation is necessary;
  - (c)* the removal of the child is necessary; or
  - (d)* a care application is to be made.
- (3) An investigation by the Director may include an analysis of the following matters in relation to a child:
  - (a)* medical;
  - (b)* health;
  - (c)* social;
  - (d)* residential;
  - (e)* educational;
  - (f)* economic; and
  - (g)* any other factors affecting the life of the child.
- (4) In conducting an investigation under this section, the Director may
  - (a)* visit the residence of the child and other places frequented by the child;
  - (b)* transport the child to a place considered by the Director to be appropriate;
  - (c)* interview
    - (i)* the child;
    - (ii)* a parent or relative of the child;



- (iii) any person who cares for the child or any person who has had an opportunity to observe the child; or
    - (iv) any person who provides health, social, educational and other services to the child or a parent of the child;
  - (d) cause an examination to be made of the physical, mental and emotional health and development of the child by a medical practitioner or other medical professional;
  - (e) require information to be provided to the Authority from medical, social, educational and other service records concerning the child, a parent of the child or both;
  - (f) request that a parent of a child undergo a physical, mental or psychological examination or any other assessment; or
  - (g) consult with such other persons and gather such other evidence as may be necessary to complete the investigation.
- (5) In conducting an investigation or assessment under this section, the Director shall have regard to any wish of the child taking into account
- (a) the age and maturity of the child; and
  - (b) the extent to which the child appears to be in need of care and protection.
- (6) The Director may apply to the court for an order requiring any person to
- (a) provide such information under subsection (5) to the Director;
  - (b) allow the Director access to a person, place or record; or
  - (c) cooperate with any investigation by the Director.
- (7) Subject to subsection (9), the Director shall provide a report of the results of an investigation to
- (a) the parent of the child or any person who is the subject of the investigation; and

- (b)* the child where he is
    - (i)* no less than 12 years; and
    - (ii)* capable of understanding the circumstances of the investigation.
- (8) A report shall not be provided under subsection (7) unless
  - (a)* the Director has reasonable grounds to believe that the report will endanger the safety of the child or any other person; or
  - (b)* a criminal investigation related to the matter has been initiated or is likely to occur.
- (9) A person who intimidates, threatens or obstructs the Director in the exercise of his functions under this section is guilty of an offence and is liable on summary conviction to a fine of \$10 000 or to a term of imprisonment of one year or to both.

**Action taken by Director**

**29.(1)** Where after an investigation or assessment the Director is of the opinion that a child is in need of care and protection, the Director shall take whatever action is necessary to safeguard or promote the safety and welfare of the child.

- (2) Without limiting subsection (1), the Director may take the following actions:
- (a)* provide or arrange for the provision of support services for the child, his family or both;
  - (b)* develop, in consultation with the parents of the child, whether jointly or separately, a care plan to meet the needs of the child or his family which does not involve taking the matter before the court;
  - (c)* ensure the protection of the child by removing the child from his parents;

- (d) ensure the protection of the child by removing the child from any place or premises where he is resident;
  - (e) seek an alternative dispute resolution procedure; or
  - (f) seek an appropriate order from the court.
- (3) The Director shall consider the appropriateness of using an alternative dispute resolution procedure prior to applying to the court for an order under subsection (2)(f).
- (4) The Director shall consider the appropriateness of an alternative dispute resolution procedure that is designed to
  - (a) ensure intervention so as to resolve problems which may exist at an early stage;
  - (b) develop a care plan;
  - (c) reduce the likelihood that an application for an order will need to be made;
  - (d) reduce the incidence of breakdown in relationships between a child and his parent; and
  - (e) work towards the making of decisions that are in the best interests of the child concerned where an application for a care order is made.
- (5) The participation by a child or a parent of a child in any form of alternative dispute resolution procedure shall be voluntary.
- (6) Where a care plan is developed pursuant to subsection (2)(b) that care plan shall be signed by the parent of the child who is the subject of the care plan.

**Decision against taking action**

- 30.(1)** The Director may decide against taking any action where he considers that
- (a) proper arrangements exist for the care and protection of the child; and

(b) the circumstances which led to the investigation or assessment have been or are being adequately addressed.

(2) Where the Director decides not to take any action, it shall make a record of the reasons for its decision.

**Removal of child by Director**

**31.(1)** Where the Director has reasonable grounds to believe that

(a) the health or safety of the child is in immediate or imminent jeopardy;  
and

(b) there is not enough time to apply to the Court for an order under section 32

the Director may, if necessary with the assistance of a police officer, and without the need for any further authority other than that conferred on him by this subsection, enter any place or premises where the child is believed to be present or to reside, and search for, locate and take the child into custody.

(2) Where a child is removed from a place or premises pursuant to subsection (1) and the care responsibility of the child is assumed by the Director, he shall, within 24 hours after the child has been removed,

(a) apply to the court for order specified in section 32; and

(b) inform the parent.

(3) The Director may place the child referred to in subsection (1) in a child care centre and the child care centre shall have delegated care responsibility in relation to a child as delegated to that child care centre by the Director.

## PART IV

## CARE AND PROTECTION ORDERS

**Court orders where child in need of care and protection**

**32.** Where the court is satisfied that a child brought before it by the Director is a child in need of care and protection, the court may make the following orders:

- (a)* a care order;
- (b)* a child assessment order;
- (c)* a compulsory assistance order;
- (d)* a contact order;
- (e)* a counselling or treatment order;
- (f)* a custody care order;
- (g)* an emergency protection order;
- (h)* a recovery order;
- (i)* a residential protection and treatment centre order;
- (j)* a supervision order;
- (k)* a support services order;
- (l)* an order to accept undertakings; or
- (m)* any other order the court thinks fit.

**Residential protection and treatment centre order**

- 33.(1) Where the court is satisfied that a child brought before it is
- (a) less than 12 years old and has committed acts which would ordinarily constitute an offence as listed in the *Second Schedule* or the *Third Schedule* to the *Child Justice Act, 2024* (Act 2024- );
  - (b) a significant threat to themselves or others; or
  - (c) in need of care and protection pursuant to section 40 of the *Child Justice Act, 2024* (Act 2024- )

the court may make a residential protection and treatment centre order to have such a child reside in a residential protection and treatment centre for a period not exceeding 3 years.

(2) Pursuant to subsection (1), the court may make such orders as are necessary to assist in determining the period of residence for a child in a residential protection and treatment centre.

(3) A residential protection and treatment centre order made under subsection (1) shall be reviewed by the court every 3 months or where the period of residence ordered by the court is less than 3 months, at such interval as the court determines.

**Emergency protection order**

34.(1) The court shall make an emergency protection order where it is satisfied, on the basis of an *ex parte* application by the Director, that

- (a) the child is suffering or is likely to suffer physical, emotional, mental or psychological harm and is in urgent need of care and protection; or
- (b) enquiries as to whether the child is suffering or is likely to suffer physical, emotional, mental or psychological harm are being frustrated by access to the child being unreasonably refused and the applicant has reason to believe that access to the child is required as a matter of urgency.

- (2) An emergency protection order may
- (a) direct a person named in the order and who is in *de facto* control of the child or who is in a position to do so, to produce the child to the applicant;
  - (b) authorise the removal of a child from any place at any time;
  - (c) prohibit the removal of the child from any place at which he was being accommodated immediately before the order was made;
  - (d) give the applicant parental responsibility for the child;
  - (e) limit the applicant to the exercise only of those powers which are specified in the order;
  - (f) determine the contact which is or is not allowed with any named person; and
  - (g) require the medical, psychiatric and psychological examination of the child.
- (3) An order made under this section shall have effect for a period not exceeding 14 days, unless the order is extended in accordance with subsection (4).
- (4) An order made under this section may, while the order remains in force, be extended once for a period not exceeding 14 days.

#### **Assessment order**

**35.(1)** A child assessment order shall be made for the purpose of assessing the following:

- (a) a child's state of health;
- (b) a child's development; or
- (c) the manner in which the child has been treated.

- (2) The court may make a child assessment order where it is satisfied that
  - (a) the applicant has reasonable cause to suspect that the child is suffering or is likely to suffer physical, emotional, mental or psychological harm;
  - (b) such an assessment is required to enable the applicant to determine whether or not the child is suffering or is likely to suffer harm; and
  - (c) it will be unlikely that an assessment will be made or be satisfactory in the absence of the order.
- (3) A child assessment order
  - (a) shall specify the period of assessment and the date on which the assessment is to begin;
  - (b) may require the medical, psychiatric and psychological examination of the child; and
  - (c) shall require the person conducting the assessment to
    - (i) do so in accordance with the terms of the order;
    - (ii) prepare a report of the assessment; and
    - (iii) submit the report to the court.
- (4) The carrying out of a medical examination under an assessment order may include the taking and analysis of samples and the use of any machine or device that enables or assists in the examination of a person.
- (5) The court may, for the purposes of an assessment order, appoint a person to assess the capacity of a person having parental responsibility, or who is seeking parental responsibility for a child, to carry out that responsibility.
- (6) The assessment to be carried out under subsection (5), must be carried out only with the consent of the person whose capacity is to be assessed.
- (7) Where a child assessment order states that a child is to be kept away from his home, it shall specify the conditions under which the child may be so kept,



including the degree of contact with other persons that he may be allowed during that period.

(8) Where the court makes a child assessment order, the person who is in *de facto* control of the child or who is in a position to produce the child, shall comply with any direction in the order and produce the child to the person named in the order.

(9) A child shall be informed about the reasons for the assessment in a language and a manner that he understands, having regard to his age, maturity and circumstances.

### **Social inquiry report**

36.(1) The court shall require a written social inquiry report in respect of a child before it makes an order under this Part.

(2) The Director shall prepare a social inquiry report and he shall comply with the request of the court whenever required to produce a social inquiry report.

(3) The Director shall make a home visit to interview the parent of the child concerned and carry out his or her investigations concerning the child before making a social inquiry report.

(4) Where the child in respect of whom the social inquiry report is made is considered by the Director to be of sufficient age and understanding, he shall be interviewed by the Director.

(5) A social inquiry report shall contain matters relating to the welfare of the child and recommendations as to any action to be taken by the court.

(6) The court shall take the information contained in the social inquiry report into account in so far as it is relevant to the order being made.

(7) Where the court is not satisfied with any recommendation made by the Director in the social inquiry report, the court shall state and record its reasons for not complying with the recommendation.

**Care order**

- 37.(1) A care order shall be made for the purpose of removing a child who is in need of care and protection and placing such child in the care of the Director.
- (2) The court may make a care order where it is satisfied that a child is a child in need of care and protection.
- (3) The court may, on the application of the Director, make an order placing a child in the care of the Director.
- (4) Where a Director makes an application to the court for a care order pursuant to subsection (3) he shall furnish the court with details on the following:
- (a) the support and assistance provided for the safety, welfare and well-being of the child; and
  - (b) any alternative action to a care order that were considered, prior to the making of the application for the care order and the reasons why the alternative action was rejected.
- (5) An application for a care order shall be accompanied by a care plan.
- (6) The Director shall make all reasonable efforts to notify
- (a) the parents of a child of the making of a care application in relation to the child; and
  - (b) the child who is the subject of a care application of the making of the application in a language and in a manner that the child can understand having regard to his development and the circumstances.
- (7) The Director shall, within 7 days, after a care application is made in relation to a child, cause a copy of the application, together with copies of all supporting affidavits and other documentary evidence, to be served on the parent of the child.
- (8) A care order may be made as an interim order or a final order.

(9) A care order shall, depending on the age of the child, be for a period not exceeding 3 years or until the child attains the age of 18 years, whichever is the earlier.

(10) A care order shall be reviewed at least once every 90 days by the Director or a person designated by the Director who may make recommendations as to any action to be taken having regard to the outcome of the review.

(11) The court may, upon an application, vary a care order.

### **Care plan**

**38.(1)** The court shall not make a final order for the removal of a child from the care and protection of his parent or allocation of parental responsibility in respect of the child unless the court has considered a care plan.

(2) A care plan shall be made by the Director and submitted to the court.

(3) A care plan shall provide for the following:

- (a) the allocation of parental responsibility for the duration of the period for which the child is removed from the care of his parent;
- (b) the kind of placement proposed to be sought for the child including
  - (i) any interim arrangement that is proposed for the child pending permanent placement; and
  - (ii) the timetable proposed for achieving a permanent placement;
- (c) residential arrangements for the child;
- (d) supervision of the child;
- (e) the child care centre designated to supervise the placement of the child;
- (f) the contact arrangements between the child and his parent, relatives, friends and other persons connected with the child;
- (g) education and training for the child;
- (h) medical care for the child;

- (i) the services that need to be provided to the child; and
  - (j) any other relevant matter.
- (4) A care plan shall be made as far as possible with
  - (a) the agreement of the parent of the child concerned; and
  - (b) the child concerned pursuant to section 7.

#### **Care responsibilities and duties under care order**

39.(1) The child care centre where a child is placed under a care order has delegated care responsibility in relation to a child as delegated to it by the court pursuant to section 37.

(2) The contact of the child with his parent, relatives and friends while he is in a child care service shall be encouraged unless it is not in the best interests of the child.

(3) The child care centre shall ensure that the development of the child while in their care, particularly his health and education, is given paramount attention.

(4) The Director shall work with the parent of the child before and after the termination of the care order, so that the child can be returned to his family or community after the termination of the care order.

(5) The Director shall be responsible for

- (a) providing and encouraging family and child counselling, before, during and after the return of the child; and
- (b) seeking the assistance of persons in the family or community who can, as far as practicable, help the process of resolving the problems which caused the care order to be made.

(6) Where a child is placed with a foster family, the Director shall inform the parent of the progress of the child and to arrange a trial period for the child to be reunited with the parent.

**Supervision order**

**40.(1)** The court may, on the application of the Director, make an order for the supervision of a child by the Director or a person recommended by the Director to perform the duties of a supervisor.

(2) The court may make a supervision order where it is satisfied that a child is in need of care and protection.

(3) A supervision order may require a child, his parent or the child and his parent

(a) to report to the supervisor at a place and at intervals stated by the supervisor; and

(b) to take part in discussions with the supervisor in relation to the welfare, safety and well-being of the child, in particular whether the child should be engaged in some form of educational, vocational or recreational activity or other activity.

(4) The court may require the submission of a report by the supervisor detailing

(a) the progress or outcome of the supervision;

(b) whether the purpose of the supervision has been achieved; and

(c) whether any other order should be made for the care and protection of the child.

(5) A supervision order shall be for a period not exceeding one year.

(6) A supervision order made under this section may, while the order remains in force, be extended once for a period not exceeding one year.

**Duties of supervisor**

**41.** A supervisor shall

(a) mentor, advise and assist the child;

- (b) advise the parent of the child;
- (c) make plans for the future of the child in consultation with the child and his parent; or
- (d) take such other reasonable steps as may be necessary to reduce any harm to the child.

**Custody care order**

42.(1) Where the Director assesses that

- (a) there is not a realistic possibility of restoring a child to the custody of a parent pursuant to the provisions of this Act;
- (b) it is in the best interest of the child that he no longer live with his parent; and
- (c) a least restrictive option is not available;

the Director shall make an application to the court for a custody care order.

(2) An application under subsection (1) shall be accompanied by a permanency plan which does not involve restoration and shall be submitted to the Court for its consideration.

(3) In preparing the permanency plan under subsection (2), the Director shall determine the type of placement which shall be suitable for the child.

(4) Where the court upon examination of the application and permanency plan made pursuant to this Part finds that the grounds upon which the application is made has been substantiated and it is necessary to provide the best interest of the child, the court shall grant the custody care order.

(5) A custody care order places a child in the custody of the Authority.

(6) Where a child is placed in the custody of the Authority, the Authority shall have the rights and responsibilities of a parent for the purposes of the care of the child and those duties shall be assessed and performed by any person caring for

the child until the custody care order is terminated by any action which results in the permanent placement of the child.

(7) For the purposes of this section “permanency plan” means a plan that aims to provide a child with a stable placement which offers long term security and that

- (a) has regard, in particular, to
  - (i) the environment of the placement being safe, nurturing, stable and secure;
  - (ii) the best interests of the child; and
  - (iii) the wishes of the child, this may include the retention by the child of relationships with people significant to the child, including his or her birth or adoptive parents, siblings, extended family, peers, family, friends and community;
- (b) meets the needs of the child; and
- (c) avoids the instability and uncertainty arising through a succession of different placements.

### **Recovery order**

**43.(1)** A recovery order shall be made where it appears to the court that there is reason to believe that a child

- (a) has been unlawfully taken or is being unlawfully taken away from the person who has care responsibility for the child;
- (b) has run away or is staying away from the person who has care responsibility for him; or
- (c) is missing.

- (2) A recovery order shall
- (a) direct any person, who is in a position to do so, to produce the child to any of the following persons:
    - (i) any person specified in the order;
    - (ii) a police officer; or
    - (iii) the Director;
  - (b) authorise the removal of the child by any of the persons under paragraph (a), or
  - (c) authorise a police officer to enter premises specified in the order to search for the child.

**Compulsory assistance order**

**44.(1)** A compulsory assistance order shall be made for the purpose of providing assistance in the form of intensive care and support that is necessary to protect the child from suicide or any other life threatening or serious self destructive behaviour.

- (2) The court shall make a compulsory assistance order where
- (a) the child will receive treatment, therapy or other services that will assist the child to deal with the problems that have led the child to be a danger to himself;
  - (b) the programme offered to the child is likely to lead to a significant improvement in his circumstances; and
  - (c) the necessary resources have been allocated by the person who will be required to provide intensive supervision of the child.
- (3) A compulsory assistance order shall provide for the following matters:
- (a) the person who is to be responsible under the order for the child;
  - (b) the place at which the child is to reside;



- (c) a description of the therapeutic programme and other support to be provided to the child;
- (d) the maintenance of 24 hour supervision of the child;
- (e) the duration of the order; and
- (f) such other matters as the court may determine.

#### **Support services order**

**45.(1)** The court may make an order directing a person or child care centre named in the order to provide support for a child.

- (2) The court shall not make an order under subsection (1) unless
  - (a) it gives notice of its intention to consider making the order to the person or child care centre who would be required to provide support under the order;
  - (b) the person or child care centre is given an opportunity to appear and be heard by the court before the court makes that order;
  - (c) the person or child care centre consents to the making of the order; and
  - (d) the views of the child in relation to the proposed order have been taken into account having regard to the age and maturity of the child.
- (3) The court may require the submission of a report by such person or child care centre detailing
  - (a) the progress or outcome of the supervision; and
  - (b) whether the purpose of the supervision has been achieved.

#### **Counselling or treatment order**

**46.(1)** A counselling or treatment order shall be made for the purpose of providing counselling, therapy or any form of treatment necessary for the well-being of the child.

- (2) The court may make an order requiring
  - (a) a child to attend counselling, a therapeutic or treatment programme relating to an abusive behaviour; and
  - (b) the parent of the child to take whatever steps are necessary to enable the child to participate in counselling, a therapeutic or treatment programme.
- (3) The court shall not make an order under this section
  - (a) if the child is or has been the subject of criminal proceedings arising from the same abusive behaviour; or
  - (b) unless the court has been presented with and has considered the provisions of a plan that outlines the therapeutic programme proposed for the child.

#### **Contact order**

47. Where a child is the subject of proceedings before a court, the court may, on an application made by any party to the proceedings, make an order for the following:

- (a) stipulating minimum requirements concerning the frequency and duration of contact between the child and his parent, relatives or other persons of significance to the child;
- (b) requiring that contact with a specified person be supervised;
- (c) denying contact with a specified person if contact with that person is not in the best interest of the child;
- (d) requiring that contact be supervised by the Director.

#### **Order to accept undertakings**

48.(1) Where parents make or agree to an undertaking in relation to the proper care and guardianship of a child, the court may make an order to accept such undertaking.

- (2) An undertaking shall be in writing and signed by the person who gives the undertaking.
- (3) The Director may, at any time, discharge a child from its care with or without an undertaking being given by the parent of the child.
- (4) In determining whether or not to exercise the power under subsection (3), the Director shall have regard to the following:
  - (a) any views expressed by the child as to whether he wishes the power to be exercised;
  - (b) any views expressed by the child as to whether he intends to return to the care and under the protection of his parents; and
  - (c) whether the exercise by the Director of that power is likely to protect the safety, welfare and well-being of the child.

#### **Provision of accommodation**

- 49.(1) The Authority may support, provide, equip and maintain a child care centre for the accommodation of children in its care.
- (2) The Authority may discharge its functions under this section by making arrangements with private bodies for the accommodation of children in its care.

#### **Maintenance of children**

- 50.(1) The Director may arrange with the parents of a child for a contribution according to their means towards the maintenance of the child who is in the care of the Authority.
- (2) Where an agreement cannot be reached in relation to subsection (1), the Director may apply to the court for an order for the maintenance of the child, having regard to the means of the parent.
- (3) Where a person, other than the parent is liable to maintain a child, an order under this section may be made against that person.

- (4) The court may direct that any amount payable under this section is paid to the Director.
- (5) An order made under this section shall remain in force as long as the child is in the care of the Authority.
- (6) A person may, at any time, apply to the court to vary or discharge an order made under this section.

## PART V

### CHILD CARE CENTRES

#### **Principles guiding the operation of child care centres**

**51.** A decision made under this Part shall be made in accordance with the following principles:

- (a) the best interests of the child shall be of paramount consideration;
- (b) a child care centre shall provide care that is safe, positive and nurturing;
- (c) a child care centre shall promote the educational, social and developmental well being of a child; and
- (d) a child shall receive services that meet his individual needs, including the needs of a child with a disability, and enhance his or her physical, emotional, cognitive, social and cultural development.

#### **Foster care**

**52.(1)** Where an order made by a court under this Act, the Director may place the child with a person who is willing to undertake the care and protection of the child.

(2) An application to foster a child shall be made to the Director in the prescribed form.

- (3) Foster care placements shall be made in accordance with such regulations as may be prescribed.
- (4) A foster parent shall have care responsibility for the child.
- (5) Where a foster child
- (a) leaves a foster home; or
  - (b) is unlawfully taken from a foster home,
- the foster parent shall immediately notify the Director.
- (6) A person shall not induce or attempt to induce a child to
- (a) leave a foster home; or
  - (b) remain away from or not return to a foster home.
- (7) A person who contravenes subsection (2), (3), (5) or (6) is guilty of an offence and is liable on summary conviction of \$25 000 or to imprisonment for a term of 5 years or to both.

#### **Approved child care centres**

**53.** The Minister may grant approval for child care centres in accordance with such regulations as may be prescribed.

#### **Purpose of approved child care centre**

- 54.(1)** An approved child care centre shall provide substitute family care for a child until such time as
- (a) the parent is able to provide adequate care to meet the basic needs of the child; or
  - (b) the child can be reunited with his family or arrangements are made for the custody or other permanent placement of the child.
- (2) The staff of the approved child care centre and the Director shall assist the child to become reunited with his parent.

(3) Where a child has been returned from an approved child care centre, the Director shall keep in regular contact with the child and his family until the completion of any order made under this Act or until the discharge of that order.

**Delegated care responsibility at approved child care centre**

55. Where a child has been placed in an approved child care centre pursuant to the provisions of this Act, the child care centre shall have delegated care responsibility for the child.

**Contact with parents and relatives**

56.(1) The approved child care centre and the Director shall maintain contact

(a) with the parent or relatives of the child in the approved child care centre; and

(b) between the child and the parent or relatives of the child.

(2) A person shall not remove a child from an approved child care centre without the consent of the manager of the centre.

(3) A person shall not induce or attempt to induce a child to

(a) leave a child care centre; or

(b) remain away from, or not return to a child care centre.

(4) Where a child

(a) leaves an approved child care centre; or

(b) is unlawfully taken from a approved child care centre,

the manager of the centre shall immediately notify the Director.

(5) A person who contravenes subsection (2), (3) or (4) is guilty of an offence and is liable on summary conviction of \$25 000 or to imprisonment for a term of 5 years or to both.

**Application for a recovery order**

57.(1) Where a child

- (a) leaves a foster home or a child care centre; or
- (b) is unlawfully taken from a foster home or a child care centre,

the Director, the foster parent or the manager of a child care centre may apply for a recovery order under section 43.

(2) Where a child leaves a foster home or a child care centre, the court shall

- (a) order the Director to conduct an investigation into the reasons for the child leaving the foster home and a child care centre; and
- (b) pending the investigation under paragraph (a) place the child into a place of safety to be determined by the Director.

(3) The findings of the investigation conducted by the Director pursuant to subsection (2)(a) shall be submitted to the court within 2 months of the order made under subsection (2)(a).

(4) Upon receipt of the findings of the Director from the investigation conducted pursuant to subsection (3) the court shall make the order or make the decision required in the circumstances.

**Order to contribute**

58.(1) The court may order a parent of a child placed in a child care centre to contribute towards the maintenance of the child.

(2) The amount contributed pursuant to subsection (1) shall be reasonable and within the means of the parent and may be varied by the court if there is a change in the circumstances of the

- (a) parent; or
- (b) child.

(3) An order for contribution made under subsection (1) shall remain in force as long as the child is in the child care centre, but a parent contributing may, at any time, apply to the court for the order to be varied or discharged on the ground that the circumstances have changed since the order was made.

#### **Corporal punishment in child care centres**

**59.(1)** Corporal punishment and cruel, inhuman or degrading measures shall not be inflicted on a child placed in a child care centre in accordance with the provisions of this Act.

(2) A person who imposes corporal punishment and cruel, inhuman or degrading measures on a child placed in a child care centre is guilty of an offence and is liable on summary conviction of \$10 000 or to imprisonment for a term of 2 years or to both.

### **PART VI**

#### **OFFENCES**

##### **Unsupervised or unattended child**

**60.(1)** Any person having the care, custody or control of a child under 12 years of age who leaves the child unsupervised or unattended for an unreasonable period of time without making reasonable provision for the supervision and safety of the child is guilty of an offence and liable on summary conviction to a fine of \$25 000 or to imprisonment for a term of 5 years or to both.

(2) For the purpose of this section, “unsupervised or unattended” refers to a situation where a child is engaged in behaviour or activity which may be considered potentially dangerous to himself or others in a setting where no evidence of adult supervision exists.



**Cruelty to children**

**61.** A parent or any person over the age of 18 years who having the custody, charge or care of any child

- (a) abuses or exposes a child to abuse;
- (b) exposes a child to danger;
- (c) fails to protect a child from abuse;
- (d) abandons or deserts a child;
- (e) neglects a child;
- (f) mistreats a child; or
- (g) causes, whether by act or omission, a child to be in need of protection,

is guilty of an offence and is liable on summary conviction to a fine of \$100 000 or to imprisonment for a term of 10 years or to both.

**Personation**

**62.** A person who personates a member of the Board, the Director or a member of the staff of the Authority is guilty of an offence and is liable on summary conviction to a fine of \$10 000 or to imprisonment for a term of 2 years or to both.

**Obstruction**

**63.** A person who obstructs or threatens the Director or a member of staff of the Authority while executing his duty under this Act is guilty of an offence and is liable on summary conviction to a fine of \$25 000 or to imprisonment for a term of 5 years or to both.

## PART VII

## MISCELLANEOUS

**Exemption from duties and taxes**

64. Notwithstanding any other enactment, the Authority is exempt from the payment of

- (a) customs duties and any other duties or taxes on goods imported for its own use;
- (b) any tax in respect of lands owned by the Authority;
- (c) stamp duty on its documents; and
- (d) income tax and any other tax imposed on income or profits of persons.

**Regulations**

65. The Minister may make Regulations generally for the purposes of giving effect to this Act.

**Amendment of Schedule**

66. The Minister may by order amend the *First Schedule*.

**Savings and transitional**

67.(1) With effect from the commencement of this Act

- (a) any contract entered into, by or on behalf of the Child Care Board, shall be deemed to have been entered into, by or on behalf of the Authority;
- (b) any right, privilege, duty or obligation conferred or imposed on the Child Care Board, and existing immediately before the commencement of this Act, shall be deemed to be conferred or imposed on the Authority;

- (c) the services of a person who immediately before the commencement of this Act was employed by the Child Care Board, and who is employed by the Authority, shall be treated as continuous for purposes of calculating pensionable service;
  - (d) all assets and liabilities of the Child Care Board are deemed to be transferred to the Authority; and
  - (e) any powers and remedies as to the taking and resisting of legal proceedings for the ascertaining, perfecting or enforcing of all rights or liabilities vested in the Child Care Board before the commencement of this Act shall be deemed to be conferred or imposed on the Authority.
- (2) Subject to this Act, the officers and other employees who, immediately before the commencement of this Act, were members of the staff of the Child Care Board established by the former Act shall upon that date comprise the staff of the Authority.
- (3) The officers and employees referred to in subsection (2) shall retain all rights in respect of pension, gratuity or other like benefit accruing to them immediately before the commencement of this Act.
- (4) Private child care centres registered under the former Act shall continue to function as if they were registered under this Act.

#### **Repeal and savings**

- 68.(1) The following Acts are repealed:
- (a) the *Child Care Board Act*, Cap. 381;
  - (b) the *Prevention of Cruelty to Children Act*, Cap. 145;
  - (c) the *Protection of Children Act*, Cap. 146A; and
  - (d) the *Young Persons Protection Act*, Cap. 193.
- (2) The
- (a) *Child Care Board Regulations, 1985* (S.I. 1985 No. 39); and

(b) *Child Care Board (Private Child Care Centres) Regulations, 1986*  
(S.I. 1986 No. 69)

shall remain in force as if made under this Act in so far as they are not inconsistent with this Act, until revoked by any regulation made under this Act.

**Consequential amendments**

69. The enactments set out in Column 1 of the *Second Schedule* are amended in the manner specified in Column 2 of the *Second Schedule*.

**Commencement**

70. This Act shall come into operation on a date to be fixed by proclamation.

**FIRST SCHEDULE***(Section 10)**Constitution and Procedure of the Child Protection Board***Constitution of Board**

1. The Board shall comprise
  - (a) a Chairman and Deputy Chairman; and
  - (b) such other members as the Minister may appoint by instrument in writing.

**Temporary appointment**

2. The Minister may, in accordance with paragraph 1(b), appoint any person to act temporarily in the place of any director who is absent from Barbados or is unable to act.

**Tenure**

- 3.(1) A director holds office for such period as the Minister determines unless he resigns or his appointment is revoked before the end of that period.
- (2) Every director is, on the expiration of the period of his appointment, eligible for re-appointment for a further period.
- (3) Where a vacancy is created by the death, resignation or removal from office of a director, a person may be appointed in accordance with paragraph 1(b) to fill that vacancy.

**Resignation of Chairman and Deputy Chairman**

4. The Chairman or Deputy Chairman may at any time resign his office by instrument in writing addressed to the Minister and, upon the receipt by the Minister of the instrument, the Chairman or Deputy Chairman ceases to be

Chairman or Deputy Chairman and, if the instrument so specifies, also ceases to be a director.

**Resignation of Director**

5. A director, other than the Chairman or Deputy Chairman may at any time resign his office by instrument in writing addressed to the Minister and transmit the instrument through the Chairman and, from the date of the receipt by the Minister of the instrument, the director ceases to be a director.

**Automatic termination of membership**

6. Any director who fails, without reasonable excuse, to attend 3 consecutive meetings of the Board ceases to be a director and is not eligible for appointment to the Board until the expiry of 3 years from the date when he ceased to be a director.

**Revocation of membership**

7. The Minister may at any time by instrument in writing revoke the appointment of any director.

**Notice in *Official Gazette***

8. The appointment and the cessation of appointment of a director shall be notified in the *Official Gazette*.

**Seal**

9.(1) The seal of the Board shall be kept in the custody of the Chairman or Deputy Chairman, or such officer of the Board as the Board approves, and may be affixed to documents or instruments pursuant to a resolution of the Authority in the presence of the Chairman or Deputy Chairman and the Secretary.

(2) The seal of the Board shall be authenticated by the signature of the Chairman and the Secretary.

(3) All documents or instruments, other than those required by law to be under seal, and all decisions of the Authority may be signified under the hand of the Chairman or Deputy Chairman.

### **Meetings**

10. The Board shall meet at least once a month and at such other times as may be necessary or expedient for the transaction of its business.

### **Special meetings**

11. The Chairman or, in the event of his absence from Barbados or inability to act as such, the Deputy Chairman may at any time call a meeting of the Board and shall call a meeting within 7 days of

- (a) the receipt by him of a request for that purpose addressed to him in writing and signed by 3 other directors;
- (b) receiving a direction to that effect addressed to him in writing and signed by the Minister.

### **Presiding at meetings**

12. The Chairman or, in his absence, the Deputy Chairman shall preside at all meetings of the Board and, in the case of the absence of both, the directors present and constituting a quorum shall elect a temporary Chairman from among their number who shall preside at the meeting.

### **Quorum**

13. The majority of the directors shall constitute a quorum.

### **Decisions**

14. The decisions of the Board shall be by a majority of votes and, in any case in which the voting is equal, the Chairman, the Deputy Chairman or temporary Chairman presiding at the meeting has, in addition to an original vote, a second or casting vote.

**Minutes**

15.(1) Minutes in proper form of each meeting shall be kept by the Secretary or such officer as the Board appoints for the purpose and shall be confirmed in writing at the next meeting by the Chairman or Deputy Chairman.

(2) Confirmed minutes of meetings shall be submitted to the Minister within one month of the date of the meeting at which they were confirmed.

**Attendance of non-members at meetings**

16.(1) The Chairman may invite any person to attend a meeting of the Board where the Board considers it necessary to do so.

(2) A person referred to in subparagraph (1) may take part in the deliberations of the Board but shall not vote on any matter.

**Appointment of committees**

17.(1) The Board may appoint committees to assist with the proper discharge of its functions subject to such conditions or restrictions as the Board imposes.

(2) The number of members of a committee appointed by the Board and the terms of office of the members shall be fixed by the Board.

(3) A committee appointed by the Board under this paragraph may include persons who are not directors but such persons shall not comprise more than one third of the membership of the committee.

**Remuneration**

18. Where a person other than a director is appointed to a committee under paragraph 17, the Board may, with the approval of the Minister, determine the remuneration and allowances to be paid to that person.



**Validity of decisions of the Board**

**19.** Any act done or proceeding taken by the Board under this Act or any regulations made thereunder may not be questioned on the ground of

- (a) the existence of any vacancy in the membership of or of any defect in the constitution of the Board;
- (b) any omission, defect or irregularity that does not affect the merits of the case.

## SECOND SCHEDULE

(Section 69)

## CONSEQUENTIAL AMENDMENTS

Column 1	Column 2
<i>Enactments</i>	<i>Amendments</i>
1. <i>Adoption Act, Cap. 212</i>	<p>1. Section 2 is amended by inserting the following in the appropriate alphabetical order:</p> <p style="padding-left: 40px;">" "Director" means the Director of Child Protection appointed in accordance with section 12 of the <i>Child Protection Act, 2024</i> (Act 2024- );"</p> <p>2. All references to the words "Child Care Board" are deleted and the word "Director" is substituted.</p> <p>3. Section 12 is deleted.</p>
2. <i>Community Legal Services Act, Cap. 112A</i>	<p>In Part II of the <i>First Schedule</i>, delete paragraph (a) and substitute the following:</p> <p style="padding-left: 40px;">"(a) minors or a child as defined under the <i>Child Protection Act, 2024</i> (Act 2024- );"</p>
3. <i>Education Act, Cap. 41</i>	<p>Insert immediately after section 53:</p> <p style="padding-left: 40px;"><b>"Day Nurseries</b></p> <p><b>53A.(1)</b> All day nurseries shall be under the control and management of the Minister.</p> <p>(2) All day nurseries shall be maintained out of moneys voted by Parliament.</p> <p>(3) Corporal punishment, severe or punishing measures shall not be inflicted on a child attending a day nursery.</p>

*Second Schedule - (Concl'd)*

## CONSEQUENTIAL AMENDMENTS - (Concl'd)

Column 1	Column 2
<i>Enactments</i>	<i>Amendments</i>
3. <i>Education Act, Cap. 41 - (Concl'd)</i>	<p>(4) A person who contravenes subsection (3) is guilty of an offence and is liable on summary conviction to a fine of \$10 000 or to a term of imprisonment for 2 years or to both.</p> <p>(5) The Minister may make regulations in respect of the control and management of day nurseries.</p> <p>(6) For the purposes of this section "day nursery" means an establishment or place providing temporary care, training or guidance for a child between the ages of 3 months to 5 years.</p> <p>(7) This section shall come into operation on a date to be fixed by Proclamation."</p>
4. <i>Public Finance Management Act (Act 2019-1)</i>	<p>The <i>First Schedule</i> is amended by deleting paragraph 9 and substituting the following:</p> <p style="padding-left: 40px;">"9. Child Protection Authority".</p>
5. <i>Statutory Boards (Pensions) Act, Cap. 384</i>	<p>1. The <i>First Schedule</i> is amended in paragraph 7 by deleting the words "Child Care Board" and substituting the words "Child Protection Authority".</p> <p>2. The <i>Second Schedule</i> is amended by deleting paragraph 7 and substituting the following:</p> <p style="padding-left: 40px;">"The Child Protection Authority established by the <i>Child Protection Act, 2024 (Act 2024- )</i>".</p>



**CHILD PROTECTION BILL, 2024**

**EXPLANATORY MEMORANDUM**

The Child Protection Bill makes provision for the reform of the law in relation to a child who is in need of care and protection.

**PART I  
PRELIMINARY**

- Clause 1:** states the short title.
- Clause 2:** sets out the definitions that will be utilised throughout the Bill.
- Clause 3:** identifies the purpose of the Bill.
- Clause 4:** sets out the principles that should be applied in the administration of the proposed legislation.
- Clause 5:** sets out the factors used to determine when a child is in need of “care and protection” for the purposes of the proposed legislation.
- Clause 6:** states that the Director of Child Protection may request the assistance of certain agencies in the interest of promoting or ensuring the safety or welfare of a child and imposes a duty on the agencies to use their best endeavours to comply with requests for assistance from the Director.
- Clause 7:** gives the child the right to participate in decisions to be made pursuant to the proposed legislation which are likely to impact that child’s life.

PART II  
ADMINISTRATION

- Clause 8:** makes provision for the establishment of a Child Protection Authority as a body corporate.
- Clause 9:** states the powers and duties of the Child Protection Authority.
- Clause 10:** makes provision for the establishment of a Child Protection Board which shall be responsible for the formulation of the policy of the Authority and for the general administration of the Authority. The *First Schedule* makes provision for the composition of the Board and rules of procedure for its operation.
- Clause 11:** states that the remuneration and allowances of the Directors of the Child Protection Board will be determined by the Minister.
- Clause 12:** makes provision for the appointment of the Director of Child Protection and sets out the duties and responsibilities of the Director generally.
- Clause 13:** makes provision for the appointment and employment of staff of the Child Protection Authority.
- Clause 14:** makes provision for the pension rights of public officers seconded from the Public Service to perform services with the Child Protection Authority.
- Clause 15:** makes provision for the saving of pensions for seconded from the Public Service to perform services with the Child Protection Authority.
- Clause 16:** sets out the role of the Minister in the context of the proposed legislation.

- Clause 17:** imposes an obligation on the Child Protection Authority to prepare a report on its proceeding in relation to child care and protection. The clause also requires the Minister to have the report laid in Parliament. The Report shall be published by the Authority on consultation with the Minister.
- Clause 18:** identifies what shall constitute the funds of the Child Protection Authority.
- Clause 19:** specifies how the funds of the Child Protection Authority may be spent.
- Clause 20:** imposes an obligation on the Child Protection Authority to keep proper books of account in accordance with International Accounting Standards and practices and instructions of the Accountant General under the *Public Finance Management Act, 2019* (Act 2019-1).
- Clause 21:** imposes an obligation on the Child Protection Authority to submit reports and information as required by Part IX of the *Public Finance Management Act, 2019* (Act 2019-1).

PART III  
INTERVENTIONS, REPORTS, AND INVESTIGATIONS

- Clause 22:** sets out the circumstances where the Director of Child Protection may intervene to assist a child in possible need of care and protection.
- Clause 23:** sets out the circumstances where a request for intervention of the Director of Child Protection can be made.
- Clause 24:** imposes an obligation on certain persons to report or cause to be reported circumstances where a child may require care and

protection to the Director of Child Protection or the Police Service.

- Clause 25:** requires the Director to investigate reports made pursuant to clause 24.
- Clause 26:** requires the Director to keep records of reports, action, or disposition of dealing with a child pursuant to clause 24.
- Clause 27:** makes provision for certain legal immunities to apply to persons who make reports pursuant to clause 24.
- Clause 28:** makes provision for the circumstances where a Director is required to conduct an investigation and an assessment in relation to whether a child requires care and protection.
- Clause 29:** makes provision for the actions that a Director may take after conducting an investigation and an assessment in relation to whether a child requires care and protection.
- Clause 30:** sets out the circumstances where a Director may decide not to take action in relation to whether a child requires care and protection.
- Clause 31:** sets out the circumstances where a Director may decide to remove a child from a place or premises where he believes the child is in immediate or imminent jeopardy and there is not enough time to apply to the court and the procedure to be followed by the Director after such removal.

PART IV  
CARE AND PROTECTION ORDERS

- Clause 32:** identifies the various orders that can be made by the court in relation to a child who may be in need of care and protection.



- Clause 33:** makes provision for the court to make a residential protection and treatment centre order in certain circumstances where the child will be required to reside in a residential protection and treatment centre.
- Clause 34:** makes provision for the court to make an emergency protection order where the child may require care and protection in certain circumstances as a matter of urgency.
- Clause 35:** makes provision for the court to make an assessment order which may be done as a predicate to enabling the court to decide on another order that may be required in respect of a child in need of care and protection.
- Clause 36:** makes provision for the court to make a social inquiry report which may be done as a predicate to enabling the court to decide on another order that may be required in respect of a child in need of care and protection.
- Clause 37:** makes provision for the court to make a care order which is made for the purpose of removing a child who is in need of care and protection and putting them in the care of the Director of Child Protection.
- Clause 38:** makes provision for the court to require the Director of Child Protection to prepare a care plan before a care order is made pursuant to clause 37.
- Clause 39:** states that a child care centre shall have delegated care responsibility of child under a care order made under clause 37. The term “delegated care responsibility” is defined by clause 2.
- Clause 40:** makes provision for the court to make a supervision order on the application of the Director of Child Protection where a

person recommended by the Director to supervise the child in need of care and protection.

**Clause 41:** states the duties of the supervisor recommended pursuant to clause 40.

**Clause 42:** makes provision for the court to make a custody care order which involves placing the child in need of care and protection into the custody of the Child Protection Authority.

**Clause 43:** makes provision for the court to make a recovery order to recover a child where that child was unlawfully taken away from a person who has care responsibility for the child, run away or is missing.

**Clause 44:** makes provision for the court to make a compulsory assistance order to provide intensive care and support to protect the child from suicide or any other life threatening or serious self destructive behaviour.

**Clause 45:** makes provision for the court to make a support services order directing a person or child care centre named in the order to provide support for a child.

**Clause 46:** makes provision for the court to make a counselling or treatment order for the purpose of providing counselling, therapy, or any form of treatment necessary for the well-being of the child.

**Clause 47:** makes provision for the court to make a contact order which specifies the circumstances in which persons may have contact with a child in need of care and protection.

- Clause 48:** makes provision for the court to accept an undertaking devised with the parent in relation to the proper care and guardianship of a child.
- Clause 49:** makes provision for the Child Protection Authority to support, provide, equip, and maintain a child care centre for the accommodation of children in its care.
- Clause 50:** makes provision for the Director of Child Protection to arrange with the parents of a child for a contribution according to their means towards the maintenance of the child who is in the care of the Authority.

PART V  
CHILD CARE CENTRES

- Clause 51:** sets out the principles that are to be used to guide the operation of child care centres.
- Clause 52:** makes provision for procedures to be observed in relation to foster care.
- Clause 53:** empowers the Minister to prescribe the grant approval of child care centres by regulations.
- Clause 54:** states the purpose of child care centres.
- Clause 55:** states that child care centres shall have delegated responsibility of a child. The term “delegated care responsibility” is defined by clause 2.
- Clause 56:** imposes a duty on the child care centre and the Director to maintain contact with the parents or relatives of a child residing in the child care centre and makes provision for

approved child care centres and Director to facilitate contact between the child and his parents and relatives.

**Clause 57:** sets out the procedure for an application for a recovery order pursuant to clause 43.

**Clause 58:** makes provision for the court to make an order to direct a parent of a child to contribute to the maintenance of a child residing in a child care centre.

**Clause 59:** prohibits the infliction of corporal punishment, severe or frightening measures on a child placed in a child care centre.

PART VI  
OFFENCES

**Clause 60:** states that leaving a child unsupervised or unattended is an offence.

**Clause 61:** makes it an offence for persons having custody, charge, or care of a child to abuse, abandon, neglect, mistreat a child or expose the child to danger, fail to protect the child or cause a child by act or omission to require care and protection.

**Clause 62:** makes it an offence for a person to impersonate a member of the Board, the Director, or a member of staff of the Authority.

**Clause 63:** makes it an offence for a person to obstruct or threaten the Director or a member of staff of the Authority from performing their duties as set out in this Bill.

PART VII  
MISCELLANEOUS

- Clause 64:** exempts the Authority from the payment of certain duties and taxes.
- Clause 65:** empowers the Minister to make regulations to give effect to the legislation.
- Clause 66:** empowers the Minister to amend the *First Schedule* by order.
- Clause 67:** makes provision for the transfer of assets, liabilities, responsibilities, duties, privileges, and obligations from the Child Care Board established under the *Child Care Board Act*, Cap. 381 to be repealed by the current legislation and the Authority established under this legislation;
- Clause 68:** makes provision for the repeal of cited Acts and the saving of certain cited regulations.
- Clause 69:** states that consequential amendments to enactments to facilitate the operation of the proposed legislation is addressed in the *Second Schedule*.
- Clause 70:** makes provision for the Act to come into operation on a date fixed by proclamation.



**CHILD JUSTICE  
BILL, 2024**





2024/02/15

**OBJECTS AND REASONS**

This Bill will make provision for

- (a) the reform of the criminal law applicable to children; and
- (b) the repeal of the
  - (i) *Juvenile Offenders Act*, Cap. 138; and
  - (ii) *Reformatory and Industrial Schools Act*, Cap. 169.

*Arrangement of Sections*

PART I

PRELIMINARY

1. Short title
2. Interpretation
3. Purpose

PART II

APPLICATION AND CRIMINAL RESPONSIBILITY

4. Application of Act
5. Age of criminal responsibility
6. Principles to be applied when dealing with children

PART III

ASSESSMENT OF A CHILD

7. Apprehension
8. Assessment
9. Persons to attend assessment

10. Powers and duties of probation officer prior to assessment
11. Powers and duties of probation officer at assessment

#### PART IV

#### SECURING ATTENDANCE OF A CHILD AT INITIAL INQUIRY

12. Methods of securing attendance of a child at initial inquiry
13. Summons
14. Written Notice
15. Uncertainty as to age of person
16. Release of child into care of the parent or the appropriate adult before the initial inquiry
17. Director of Public Prosecutions may authorise the release of a child
18. Duty of police officer and person into whose care a child is released
19. Release of child on recognizance prior to initial inquiry
20. Child accused of certain offences not to be released from detention
21. Detention in a secure residential facility
22. Death, injury or illness of a child in police custody
23. Register of children waiting to attend an initial inquiry

PART V

INITIAL INQUIRY AND DIVERSION

24. Nature and objectives of an initial inquiry
25. Persons to attend an initial inquiry
26. Procedure relating to an initial inquiry
27. Powers and duties of a magistrate with respect to an initial inquiry
28. Failure to appear at an initial inquiry
29. Release of child into care of parent or appropriate adult
30. Detention of child after first appearance before a magistrate
31. Postponement of an initial inquiry
32. Postponement of initial inquiry for a more detailed assessment
33. Decision regarding diversion
34. Purposes of diversion
35. Child to be considered for diversion under certain circumstances
36. Levels of diversion options
37. Minimum standards applicable to diversion and diversion options
38. Failure to comply with diversion direction
39. Development of diversion options

- 40. Protection proceedings
- 41. Referral of matter for trial and detention pending trial

PART VI

COURT PROCEEDINGS

- 42. Conduct of proceedings relating to child in Court
- 43. Treatment of a child in Court
- 44. Criminal responsibility
- 45. Separation and joinder of trials involving child and adult
- 46. Time limits relating to conclusion of trials
- 47. Court may divert matter
- 48. Privacy and confidentiality
- 49. Prohibition of the publication of certain matters

PART VII

SENTENCING OF A CHILD

- 50. Child to be sentenced in accordance with this Part
- 51. Pre-sentence reports
- 52. Purposes of sentencing
- 53. Community based sentences

- 54. Restorative justice sentences
- 55. Family group conference
- 56. Sentences involving correctional supervision
- 57. Sentence with a compulsory residential requirement
- 58. Referral to secure residential facility
- 59. Referral to prison
- 60. Postponement or suspension of passing sentence
- 61. Penalty in lieu of fine or imprisonment
- 62. Prohibition on certain forms of punishment
- 63. Notice to parent of child
- 64. Proceedings to show cause

PART VIII

LEGAL REPRESENTATION

- 65. Child to be provided with legal representation
- 66. Requirements to be complied with by attorney-at-law

PART IX

GENERAL PROVISIONS AS TO PROCEEDINGS IN COURT

- 67. Extension of power to take depositions

## PART X

## SECURE RESIDENTIAL FACILITY

68. Secure residential facility
69. Designation of a secure residential facility
70. Designation of the Government Industrial School as a secure residential facility
71. Detention of a child
72. Child Justice Board
73. Functions of the Child Justice Board
74. Appointment of a Director
75. Staff
76. Status of certain officers of a secure residential facility
77. Maintenance of records
78. Establishment of secure residential facility programmes
79. Medical or Psychiatric Treatment
80. Transfer of a child to another secure residential facility
81. Emergency
82. Notification of death, injury or serious illness

- 83.** Resources of the secure residential facility
- 84.** Responsibilities of a child in custody
- 85.** Infractions
- 86.** Misconduct
- 87.** Power of the Director to impose discipline on a child in a secure residential facility
- 88.** Searches
- 89.** Maintenance of order in secure residential facility
- 90.** Grievance procedures
- 91.** Discharge of child from a secure residential facility
- 92.** Discharge approval by Minister
- 93.** Appeal

## PART XI

### REINTEGRATION

- 94.** Establishment of Reintegration Board
- 95.** Functions of the Reintegration Board
- 96.** Remuneration of the members of Reintegration Board
- 97.** Staff



- 98.** Expenses
- 99.** Confidentiality
- 100.** Protection of members of the Reintegration Board
- 101.** Eligibility for grant of reintegration order
- 102.** Application for a reintegration order
- 103.** Grant of a reintegration order
- 104.** Reintegration order
- 105.** Revocation or suspension of reintegration order
- 106.** Forfeiture of reintegration
- 107.** Reapplication
- 108.** Reintegration continuing education order

**PART XII**

**MISCELLANEOUS**

- 109.** Regulations
- 110.** Amendment of Schedules
- 111.** Transitional
- 112.** Consequential amendments
- 113.** Repeal

**114. Commencement**

FIRST SCHEDULE

SECOND SCHEDULE

THIRD SCHEDULE

FOURTH SCHEDULE

FIFTH SCHEDULE

SIXTH SCHEDULE

## **BARBADOS**

A Bill entitled

An Act to provide for the reform of the criminal law applicable to children  
and the repeal of the

- (a) *Juvenile Offenders Act*, Cap. 138; and
- (b) *Reformatory and Industrial Schools Act*, Cap. 169.

ENACTED by the Parliament of Barbados as follows:

PART I

PRELIMINARY

**Short title**

1. This Act may be cited as the *Child Justice Act, 2024*.

**Interpretation**

- 2.(1) In this Act,

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

“apprehension” means where a police officer arrests a child in conflict with the law;

“appropriate adult” means

(a) a member of the family of the child; or

(b) a custodian of the child,

who has attained the age of 18 years, but excludes a parent of the child;

“assessment” means the assessment of a child by a probation officer conducted in accordance with section 8;

“attorney-at-law” has the meaning assigned to it by the *Legal Profession Act, Cap. 370A*;

“child” means a person under the age of 18 years;

“Child Protection Authority” means the Authority established by section 8 of the *Child Protection Act, 2024 (Act 2024-)*;

“Child Justice Board” means the Board appointed in accordance with section 72(1);

- “child care centre” has the meaning assigned to it by section 2 of the *Child Protection Act, 2024* (Act 2024-);
- “child in conflict with the law” means a child who is alleged to have committed an offence;
- “community based service” means work for a community organisation or other work of value to the community performed by a child without payment;
- “community based sentence” means a sentence referred to in section 53;
- “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 suitable person designated by the Court;
- “correctional supervision” means the sentence referred to in section 56 requiring a child to be placed under the supervision and guidance of a probation officer;
- “Court” means the Magistrate’s Court or the Criminal Division of the High Court where applicable;
- “Director” means the Director of a secure residential facility appointed under section 74;
- “Director of Child Protection” means the Director in accordance with section 12 of the *Child Protection Act, 2024* (Act 2024-);
- “detention” includes confinement in a prison, secure residential facility or a place of safety;
- “diversion” means the removal of cases of children alleged to have committed an offence from the formal court procedures and the adoption of informal procedures in relation to such children, pursuant to Part V;
- “diversion option” means a plan or programme with a specified content and duration set out in three levels under section 36;
- “family group conference” means a gathering convened by a probation officer as a diversion or sentencing option under section 55;

“family time order” means an order requiring a child to spend a specified number of hours with his family;

“good behaviour order” means an order requiring a child to abide by an agreement made between the child and his family to comply with certain standards of behaviour;

“initial inquiry” means the procedure conducted in accordance with Part V, which takes place after an assessment and before trial in a court;

“natural father” includes a man who has been adjudged to be the biological father of a child;

“natural mother” means a woman who gave birth to a child;

“natural parent” means a natural mother or a natural father;

“parent” includes

- (a) a natural 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 12 months and who has a continuing relationship with the child; or
- (c) a legal guardian of the child who has custody or guardianship rights in relation to the child,

but does not include a person acting as a care giver on behalf of the Child Protection Authority;

“parental responsibility”

- (a) means the duties, powers, responsibilities and authority; and
- (b) includes the rights and obligations

which by any relevant enactment in force, the parent of a child has in relation to that child;

“place of assessment” means a place or institution selected by a probation officer to conduct an assessment;

“place of safety” means

- (a) a child care centre designated by the Child Protection Authority;
- (b) a hospital;
- (c) an institution or a place designated as a place of safety by the Child Protection Authority;
- (d) an institution or a place where the person in charge will temporarily receive and take care of a child in conflict with the law and which, in the opinion of the Court, may be a safe and secure place to keep such a child; or
- (e) a residential protection and treatment centre

but does not include a secure residential facility or a prison;

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

“Police Service” has the meaning assigned to it by the *Police Act*, Cap. 167;

“positive peer association order” means an order requiring a child to associate with a person whom the probation officer has reason to believe can contribute to the positive behaviour of the child;

“prison” has the meaning assigned to it by the *Prisons Act*, Cap. 168;

“probation officer” means an officer appointed under the *Probation of Offenders Act*, Cap. 146;

“prosecutor” shall refer to the Director of Public Prosecutions in relation to indictable offences or a police prosecutor in relation to summary offences;

“Reintegration Board” means the Board established in accordance with section 94;

“reintegration order” means the order granted by the Reintegration Board pursuant to section 103;

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

“residential protection and treatment centre” has the meaning assigned to it by section 2 of the *Child Protection Act, 2024 (Act 2024-)* ;

“reporting order” means an order requiring a child to report to a person specified by a magistrate at a time specified in such order so as to enable the person to monitor the behaviour of the child;

“restorative justice” means the promotion of reconciliation, restitution and responsibility through the involvement of a child, the parents of a child, the members of family of the child, the victim and the community;

“secure residential facility” means a residential facility described under section 68;

“social media” means websites or applications that enable users to create and share content or to participate in social networking;

“supervision and guidance order” 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

“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.

(2) For the purposes of this Act, where a “place of safety” is determined to be a place of detention, it shall be a place that

- (a) is suitable for the detention of a child;
- (b) provides for a child to be detained separately from an adult; and
- (c) provides for a female child to be detained separately from a male child.



**Purpose**

3. The purpose of this Act shall be to ensure compliance with
- (a) the United Nations Convention on the Rights of the Child;
  - (b) the Universal Declaration of Human Rights;
  - (c) the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”);
  - (d) the United Nations Rules for the Protection of Juveniles Deprived of their Liberty; and
  - (e) the United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines).

PART II

APPLICATION AND CRIMINAL RESPONSIBILITY

**Application of Act**

4. This Act shall apply to
- (a) a child who is alleged to have committed an offence and who at the time of commission of that offence was under the age of 18 years; or
  - (b) a person referred to in paragraph (a) who attained the age of 18 years before proceedings that were instituted against him, pursuant to this Act, have been concluded.

**Age of criminal responsibility**

5. A child under the age of 12 years is not capable of committing a criminal offence.

**Principles to be applied when dealing with children**

6.(1) The Court or a person performing any function pursuant to the provisions of this Act shall be guided by the following principles:

- (a) 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 age, maturity and intellectual development;
- (d) a child shall be treated in a manner which takes into account his beliefs;
- (e) all procedures to be carried out pursuant to this Act shall be conducted and completed in a timely manner;
- (f) the parents and families of a child shall have the right to assist the 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
  - (i) circumstances of the child;
  - (ii) nature of the offence; and
  - (iii) interests of society,

and a child shall not be treated more severely than an adult would have been in the same circumstances;

- (h) a child lacking in family support, educational or employment opportunities shall have equal access to available services; and
- (i) every effort shall be made to ensure that a child receives equal treatment in relation to other children who have committed similar offences.

(2) A Court 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) where 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 a bond, upon the recommendation of the prosecutor, shall be considered; or
- (c) where the child must be 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 detained under this Act

- (a) shall be detained
  - (i) separately from adults;
  - (ii) with children of the same sex; and
  - (iii) 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
  - (i) to adequate food and water;
  - (ii) to medical treatment;
  - (iii) to a reasonable number of visits by a
    - (A) parent;
    - (B) appropriate adult;
    - (C) attorney-at-law;
    - (D) social worker;
    - (E) probation officer;

- (F) health worker;
- (G) religious counsellor;
- (iv) of access to reading material;
- (v) to adequate exercise;
- (vi) to access to recreational activities;
- (vii) to access suitable equipment and assistive devices where the child has a disability; and
- (viii) to adequate clothing.

(4) For the purposes of this section, “disability” includes a long-term physical, mental, intellectual or sensory impairment which, in interaction with various barriers, may hinder a person from fully and effectively participating in society on an equal basis with others.

### PART III

#### ASSESSMENT OF A CHILD

##### **Apprehension**

7.(1) A police officer on apprehending a child shall promptly notify the parent of the child, or if the parent cannot be found, an appropriate adult, of the apprehension of the child.

(2) Where a police officer has notified a parent or an appropriate adult of an apprehension, that police officer shall inform the child and a parent or appropriate adult in the presence of the child of the right of the child

- (a) to be informed of the nature of the offence or offences alleged to have been committed by the child;
- (b) to seek the advice of an attorney-at-law;

- (c) to have a parent or an appropriate adult present where the child is questioned, interviewed or assessed in respect of an offence or offences alleged to have been committed by the child;
  - (d) to remain silent; and
  - (e) to be informed of the procedures to be followed pursuant to this Act and any other relevant enactment that is in force.
- (3) The police officer who has apprehended a child, or any other police officer shall not later than 24 hours after the apprehension, inform a probation officer of the apprehension.
- (4) The police officer responsible for the investigation of a case with respect to a child, apprehended in accordance with subsection (1), shall ensure that the child is assessed by a probation officer, before the commencement of the initial inquiry into the offence alleged to have been committed by the child.
- (5) Where
- (a) the police officer is unable to inform the probation officer of the apprehension as required under subsection (3); or
  - (b) the police officer responsible for the investigation of a case is unable to have the child assessed as required under subsection (4),
- a written report shall be submitted to a magistrate at the initial inquiry stating the reasons for non-compliance.
- (6) Where a child, who is accused of an offence referred to in the *First Schedule* has not been released from police custody before appearing at an initial inquiry, the police officer who apprehended the child shall provide a magistrate with an oral report, pending a submission of a written report, stating the reasons why the child could not be released.

- (7) A police officer shall not apprehend a child under the age of 12 years who is alleged to have committed an offence but
- (a) shall inform a probation officer and the Director of Child Protection of the following particulars of the child:
    - (i) the name of the child;
    - (ii) the age of the child;
    - (iii) the offence alleged to have been committed by the child; and
    - (iv) the name, address and telephone number of the parent or appropriate adult; and
  - (b) may remove the child to a place of safety where the police officer has reason to believe that it is necessary to do so for the safety of the child and he may arrange for proceedings to be commenced under the *Child Protection Act, 2024* (Act 2024-).

#### **Assessment**

- 8.(1) Where a probation officer who receives a notification from a police officer that a child has been apprehended in accordance with section 6, the probation officer shall assess the child in a place of assessment within 96 hours prior to the child appearing at an initial inquiry relating to that child.
- (2) A probation officer may select a place of assessment for the temporary reception of a child in conflict with the law, prior to or pending an initial inquiry regarding the child.
- (3) Where a probation officer conducts an assessment of a child in conflict with the law, he shall collect the information required for the preparation of the assessment report set out in subsection (4).

(4) At the end of an assessment, a probation officer shall complete an assessment report which shall include

- (a) the following particulars in relation to the child
  - (i) the name of the child;
  - (ii) the age of the child;
  - (iii) the offence alleged to have been committed by the child;
  - (iv) the name, address and telephone number of the parent or appropriate adult;
  - (v) the name, address and telephone number of the attorney-at law representing the child;
  - (vi) whether the child
    - (A) has been released into the custody of a parent or appropriate adult;
    - (B) is being detained in a place of safety; or
    - (C) is being detained in a secure residential facility; and
- (b) any information concerning the child which will assist the magistrate at the initial inquiry in determining
  - (i) the prospects of diversion;
  - (ii) the possible release of the child into the care of a parent of the child or an appropriate adult, if the child is in detention;
  - (iii) the placement, where applicable, of the child in a particular secure residential facility or in a place of safety,

giving due consideration to the age, physical and mental status of the child and the degree of the alleged offence.

(5) Where it appears to the probation officer that the child does not intend to acknowledge responsibility for the alleged offence, this information shall be included in the assessment report.

(6) The probation officer shall submit the assessment report to the magistrate conducting the initial inquiry prior to the commencement of the initial inquiry.

**Persons to attend assessment**

9.(1) Subject to subsections (3) and (6) of section 10, the parent of the child or an appropriate adult shall attend the assessment of the child.

(2) A child shall be present at his assessment.

(3) The following persons may attend the assessment of a child:

(a) a prosecutor;

(b) the attorney-at-law representing the child; or

(c) a police officer.

**Powers and duties of probation officer prior to assessment**

10.(1) A probation officer may at any time before the assessment of a child issue a notice in the prescribed form to the parent of the child or to an appropriate adult to appear at the assessment.

(2) A notice issued pursuant to subsection (1) shall be delivered by a police officer on the request of the probation officer in the prescribed manner.

(3) A person notified pursuant to subsection (1) may apply to the probation officer for permission to be absent or excluded from the assessment, and where the probation officer grants such permission, the permission shall be in writing.

(4) A probation officer may request a police officer to

(a) obtain any documentation required for the completion of the assessment of a child;

(b) locate the parent of a child or an appropriate adult; and



- (c) provide transport, in order to secure the attendance of the child and his parent or an appropriate adult, for the assessment.
- (5) A probation officer shall make every effort to locate a parent of the child or an appropriate adult for the purposes of concluding the assessment of the child.
- (6) Where all reasonable efforts to locate a parent of the child or an appropriate adult have failed, the probation officer shall conclude the assessment in the absence of such persons.

**Powers and duties of probation officer at assessment**

- 11.(1)** A probation officer shall
- (a) explain the purpose of the assessment to
    - (i) the child; and
    - (ii) the parent of the child or an appropriate adult;
  - (b) inform the child of his right to
    - (i) be informed of the nature of the offence or offences alleged to have been committed;
    - (ii) seek the advice of an attorney-at-law;
    - (iii) have a parent or an appropriate adult present where he is to be questioned, interviewed or assessed in respect of an offence or offences alleged to have been committed;
    - (iv) remain silent; and
    - (v) be informed of the procedures to be followed pursuant to this Act and any other relevant enactment that is in force;
  - (c) explain the procedures to be followed under this Act to
    - (i) the child; and
    - (ii) the parent of the child or an appropriate adult; and

- (d)* inquire from the child whether he intends to acknowledge responsibility for the offence in question.
- (2) The probation 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 the assessment and where such information is obtained, the child shall be informed of the information.
- (3) Where a child is accused with another child, the probation officer may conduct the assessment of the children simultaneously.
- (4) The probation officer shall encourage participation of the child during the assessment process.

#### PART IV

#### SECURING ATTENDANCE OF A CHILD AT INITIAL INQUIRY

##### **Methods of securing attendance of a child at initial inquiry**

- 12.(1)** The methods which may be used by a police officer for securing the attendance of a child in conflict with the law, at an initial inquiry, are by
- (a)* apprehension;
  - (b)* a summons; or
  - (c)* a written notice.
- (2) Before a police officer uses any of the methods for securing the attendance of a child in conflict with the law referred to in subsection (1), the police officer shall consult with the prosecutor as to whether or not the matter should be set down for an initial inquiry.

**Summons**

**13.(1)** A summons issued in respect of a child shall specify the place, date and time of the initial inquiry.

(2) A copy of the summons relating to the alleged offence by the child shall be served on the parents of the child or on the appropriate adult.

(3) A police officer shall,

(a) not later than 24 hours after the service of the summons referred to in subsection (1) inform a probation officer of the service of the summons in the prescribed manner;

(b) as soon as is reasonably possible, but prior to the commencement of the initial inquiry, inform the child

(i) of the nature of the offence or offences alleged to have been committed;

(ii) of his right to

(A) seek the advice of an attorney-at-law;

(B) have a parent or an appropriate adult present where he is to be questioned, interviewed or assessed in respect of an offence or offences alleged to have been committed;

(C) remain silent; and

(D) be informed of the procedures to be followed pursuant to this Act and any other relevant enactment that is in force.

**Written Notice**

**14.(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 pursuant to subsection (1), shall
  - (a) direct the parent of the child or an appropriate adult to bring the child or cause the child to appear at the initial inquiry and to have the child remain in attendance at the initial inquiry relating to the offence in question; and
  - (b) complete and hand to the child and to the parent of the child or to an appropriate adult, a written notice on which shall be entered
    - (i) the offence in respect of which the initial inquiry will be conducted; and
    - (ii) the time and place at which the child shall appear.
- (3) The notice referred to subsection (2)(b) shall be written in a manner that can be understood by a child.
- (4) Pursuant to subsection (2)(b), the police officer shall
  - (a) when he hands the written notice to a child, the parent of the child or an appropriate adult, inform them of
    - (i) the nature of the offence or offences alleged to have been committed;
    - (ii) the child's right to
      - (A) seek the advice of an attorney-at-law;
      - (B) have a parent or an appropriate adult present where he is to be questioned, interviewed or assessed in respect of an offence or offences alleged to have been committed;
      - (C) remain silent;
      - (D) be informed of the procedures to be followed pursuant to this Act and any other relevant enactment that is in force; and

- (b) not later than 24 hours after handing the written notice to the child, the parent of the child or the appropriate adult inform a probation officer that he has done so.

#### **Uncertainty as to age of person**

**15.** Where 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 age would render a person 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.

#### **Release of child into care of the parent or the appropriate adult before the initial inquiry**

**16.(1)** A police officer shall release a child who is in detention in police custody and who is accused of an offence referred to in the *First Schedule*, into the care of the parent of the child or an appropriate adult, before the child appears at the initial inquiry unless

- (a) exceptional circumstances 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.

(2) A police officer may, in consultation with the prosecutor, release a child who

- (a) is accused of an offence referred to in the *First Schedule* but who has not been released pursuant to subsection (1); or
- (b) is in detention in police custody and who is accused of an offence referred to in the *Second Schedule*,

into the care of a parent of the child or an appropriate adult on any one or more conditions referred to in subsection (3).

(3) A child may be released pursuant to subsection (2) on the condition that the child

- (a) appears at a specified place and time for assessment;
- (b) does not
  - (i) interfere with a witness;
  - (ii) tamper with evidence; or
  - (iii) associate with a person or group of people specified by the police officer in consultation with the prosecutor; and
- (c) resides at a particular address.

**Director of Public Prosecutions may authorise the release of a child**

17.(1) Notwithstanding the decision of a police officer under section 16(1), the Director of Public Prosecutions may, authorise the release of a child from detention in police custody into the care of the parent of the child or an appropriate adult on any of the conditions referred to in section 16(3).

(2) Where a release is authorised under subsection (1), the written notice referred to in section 14, shall be handed to the child and to the person into whose care the child is released.

**Duty of police officer and person into whose care a child is released**

18. A police officer who releases a child from detention in accordance with section 16 or who releases a child on the direction of the Director of Public

Prosecutions in accordance with section 17, 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
  - (i) offence in respect of which the child is being accused;
  - (ii) conditions relating to the release of the child; and
  - (iii) place, date and time at which the child shall appear for the initial inquiry;
- (b) direct a parent of the child or appropriate adult to bring the child or cause the child to appear at the initial inquiry at a specified place, date and time and to remain in attendance and, if any 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 conditions referred to in paragraph (a) have been imposed, to comply with those conditions.

**Release of child on recognizance prior to initial inquiry**

**19.(1)** Where a child is taken into police custody with or without a warrant, and cannot be brought before a magistrate immediately, the police officer in charge of a police station to which the child is brought shall inquire into the matter and shall in any case

- (a) unless the child is accused of an offence referred to in the *Third Schedule*; or
- (b) unless it is necessary in the interest of the child to remove him from association with any undesirable person,

release the child on recognizance, with or without sureties, for such an amount as will, in the opinion of the police officer, secure the attendance of the child at the initial inquiry.

(2) The recognizance provided pursuant to 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 may, after consultation with the Director of Public Prosecutions, issue directives regarding the conditions to be set for recognizance of bail.

(4) The Director of Public Prosecutions may, in consultation with the police officer charged with the investigation with respect to a child, authorise the release of a child accused of an offence referred to in the *Second Schedule* on recognizance prior to the appearance of the child at the initial inquiry, subject to reasonable conditions where the release of the child into the care of a parent of the child or an appropriate adult is deemed appropriate.

#### **Child accused of certain offences not to be released from detention**

20. Subject to section 21, a police officer shall not release a child accused of an offence referred to in the *Third Schedule* from detention.

#### **Detention in a secure residential facility**

21. Where a child cannot be released, pursuant to section 20,

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

the child shall be detained in a secure residential facility.

#### **Death, injury or illness of a child in police custody**

22.(1) Where a child in detention in police custody complains that he is ill or that he has sustained an injury during apprehension or whilst in detention, the police officer to whom such complaint is made shall report the complaint to the police officer in charge of the police station where the child was apprehended,



and the police officer in charge of the police station shall delegate a police officer to

- (a) take the child to a medical doctor for examination; and
- (b) notify the parent or appropriate adult of the child

as soon as possible but not later than within 24 hours of the complaint.

(2) The report of the medical doctor in respect of a child who is injured while in detention in police custody shall be included in the appropriate police docket in the police station where the child was apprehended and the report may be examined by a magistrate, an attorney-at-law representing the child or the Director of Public Prosecutions.

(3) Where a child in detention in police custody dies the police officer in charge of the police station shall immediately notify

- (a) the Coroner; and
- (b) the parent or appropriate adult of the child.

**Register of children waiting to attend an initial inquiry**

23.(1) The police officer in charge of a police station shall keep a register regarding the children who are to attend an initial inquiry.

(2) The register referred to in subsection (1) shall contain the following particulars:

- (a) the name of the child;
- (b) the age of the child;
- (c) the offence alleged to have been committed by the child;
- (d) the name, address and telephone number of the parent or the appropriate adult;
- (e) the name and number of the attorney-at-law representing the child;

- (f)* whether the child
  - (i) is being detained in a secure residential facility;
  - (ii) is being kept at a place of safety; or
  - (iii) has been released into the custody of a parent or an appropriate adult.
- (3) The register referred to in subsection (1) may be examined by a magistrate, an attorney-at-law representing the child or the prosecutor.

## PART V

### INITIAL INQUIRY AND DIVERSION

#### **Nature and objectives of an initial inquiry**

- 24.(1)** An initial inquiry shall be held in respect of a child after an assessment is completed pursuant to Part III.
- (2) The appearance of a child at an initial inquiry before a magistrate shall be the equivalent of a first appearance before a Court.
  - (3) The objectives of an initial inquiry are to
    - (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 prosecutor 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 circumstances and the offence are considered in order to make a decision on diversion and placement of the child;
    - (e)* ensure that the views of all persons, required to be present pursuant to section 25(1), shall be considered before a decision is taken;

- (f)* encourage the participation of the child and his parent or an appropriate adult in decisions concerning the child; and
  - (g)* determine the release or placement of the child pending
    - (i)* the conclusion of the initial inquiry; or
    - (ii)* the appearance of the child in Court.
- (4) An initial inquiry shall be held in such place as a magistrate may determine having regard to privacy and confidentiality.
- (5) A magistrate shall conduct the proceedings in an informal manner by asking questions, interviewing persons at the initial inquiry and obtaining information.
- (6) A magistrate in conducting proceedings in an informal manner pursuant to subsection (5) may seek the assistance of a social worker when asking questions, interviewing persons at the initial inquiry and obtaining information.

**Persons to attend an initial inquiry**

**25.(1)** The following persons shall attend an initial inquiry

- (a)* the child;
  - (b)* the parent of the child or an appropriate adult;
  - (c)* the probation officer who conducted the assessment of the child;
  - (d)* the prosecutor;
  - (e)* any other person whose attendance may be considered necessary by the magistrate conducting the inquiry.
- (2) A magistrate may exclude the parent of the child or an appropriate adult from attending the initial inquiry where their presence at the initial inquiry is not in the best interest of the child.

- (3) Where an initial inquiry proceeds in the absence of the probation officer who conducted the assessment of the child, the assessment report shall be made available at the initial inquiry.
- (4) The following persons may attend an initial inquiry
- (a) the attorney-at-law representing the child;
  - (b) a police officer;
  - (c) any other person whose attendance may be considered necessary by the magistrate conducting the inquiry.

**Procedure relating to an initial inquiry**

- 26.(1) At the commencement of an initial inquiry a magistrate shall
- (a) determine the age of the child;
  - (b) explain the purpose of the initial inquiry to the child;
  - (c) inform the child of the nature of the offence or offences alleged to have been committed;
  - (d) inform the child of his right
    - (i) to seek the advice of an attorney-at-law;
    - (ii) to have a parent or an appropriate adult present at the initial inquiry; and
    - (iii) to be informed of the procedures to be followed pursuant to this Act and any other relevant enactment that is in force; and
  - (e) explain to the child the immediate procedures to be followed pursuant to this Act.
- (2) A prosecutor shall ensure that the magistrate has a copy of the assessment report, if available.

- (3) A prosecutor or a probation officer attending an initial inquiry may submit to the magistrate information regarding a previous diversion or conviction of the child concerned.
- (4) A child, the attorney-at-law representing the child, the parent of the child, an appropriate adult and the prosecutor, shall each be given an opportunity to question the probation officer who prepared the assessment report on the child or any other person sharing information at the initial inquiry.
- (5) Where the child in respect of whom an initial inquiry is being conducted, is a co-accused with another child, a joint initial inquiry may be held.
- (6) Where a joint initial inquiry is held pursuant to subsection (5), different decisions may be made in respect of each child.
- (7) Where a child does not acknowledge responsibility for the offence with which he is being charged, no further questions regarding the offence may be put to the child and the prosecutor may set the matter down for trial in the Court.
- (8) Information furnished at an initial inquiry shall not be used in subsequent proceedings, against the person who furnished the information.
- (9) A magistrate shall keep a record of all proceedings relating to an initial inquiry.

**Powers and duties of a magistrate with respect to an initial inquiry**

27.(1) A magistrate shall conduct all initial inquiries and discuss all relevant considerations of a child's case with the probation officer who prepared the assessment report in respect of the child before making a decision pursuant to this Part.

- (2) A magistrate may
  - (a) summon or cause to be summoned any person whose presence is necessary for the conclusion of an 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 such steps as 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) Where a child has not been assessed at the commencement of the initial inquiry, the magistrate shall make arrangements with the Chief Probation Officer to have the assessment conducted in the manner set out in section 8.
- (4) The magistrate may dispense with the assessment if it is in the best interests of the child to do so.
- (5) A magistrate shall ensure that the child, the attorney-at-law representing the child and the parent of the child or an appropriate adult
- (a)* know of the recommendations in the report prepared by the probation officer; and
  - (b)* are informed of any diversion option and the aims and content of such option.
- (6) The probation officer who prepared the assessment report in respect of a child shall be present at the initial inquiry of that child and the magistrate may request him to explain, elaborate upon or justify any recommendation or statement made in the assessment report, and he may also be asked to provide additional information.

(7) A magistrate shall consider the reports regarding the apprehension of the child and the detention in police custody provided by the police officer who apprehended the child.

**Failure to appear at an initial inquiry**

28.(1) A parent or an appropriate adult, who has been directed to appear at an initial inquiry and who fails to do so, is guilty of an offence and is liable on summary conviction to a fine of \$5 000 or to imprisonment for 12 months or to both.

(2) Subsection (1) shall apply with the changes required by the context and subject to sections 56 and 57 to a child who has been released in the care of his parent or an appropriate adult and who fails to comply with the direction contained in the written notice referred to in section 14 or with any condition imposed pursuant to section 16(3).

**Release of child into care of parent or appropriate adult**

29.(1) A magistrate shall release a child who is in detention, into the care of the parent of the child or an appropriate adult where

- (a) the initial inquiry is not disposed of at the first appearance of the child before a magistrate; and
- (b) it is in the interest of justice to 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 of the child or an appropriate adult, a magistrate shall have regard to the recommendation made by the probation 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 of the child or the 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 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 Government or on the part of the child or his attorney-at-law;
  - (k) whether detention would prejudice the child in the preparation of his case;
  - (l) the likelihood that, where the child is found guilty of the offence he will be detained for a substantial period; and
  - (n) the receipt of a written confirmation by the Director of Public Prosecutions that he intends to charge the child with an offence referred to in the *Third Schedule*.
- (3) A magistrate may, in releasing a child pursuant to subsection (1), require the child
- (a) to appear before the magistrate at a specified place and time;
  - (b) to report periodically to a specified person or place;
  - (c) to attend a particular school;
  - (d) to reside at a particular address;
  - (e) to be placed under the supervision of a person specified by the magistrate; or



- (f)* not to interfere with a witness, tamper with any evidence or associate with any person or group of persons specified by the magistrate.
- (4) Where a magistrate releases a child into the care of a parent of the child or an appropriate adult, the magistrate shall direct the parent or the appropriate adult, as the case may be, to bring the child or ensure that the child appears at a specified time and place and, where a condition has been imposed pursuant to 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) is guilty of an offence and is liable on summary conviction to a fine of \$5 000 or to imprisonment for 12 months or to both.
- (6) Where a child has been released into the care of his parent or an appropriate adult and the child fails to comply with a condition imposed pursuant to subsection (3), the magistrate may direct that the child be detained in a secure residential facility.
- (7) A magistrate may, after consideration of the facts release a child on bail or recognizance having regard to the factors referred to in subsection (2) and subject to one or more of the conditions referred to in subsection (3).
- (8) A magistrate may refuse to release a child on bail where
  - (a)* the magistrate is satisfied that there are substantial grounds for believing that the child, if release on bail, whether subject to conditions or not, would
    - (i) fail to surrender to custody;
    - (ii) commit an offence; or
    - (iii) interfere with witnesses; or
  - (b)* the child is charged with an offence alleged to have been committed while he was released on bail.

**Detention of child after first appearance before a magistrate**

**30.(1)** A magistrate may direct the detention of a child in a secure residential facility where

- (a) the proceedings of the initial inquiry are postponed pursuant to section 31 or 32;
  - (b) the release of the child into the care of his parent or an appropriate adult is for any reason not possible; or
  - (c) the child is to appear for trial pursuant to section 41.
- (2) A magistrate shall have regard to the recommendations made by the probation officer when deciding where to place the child pursuant to subsection (1).
- (3) A child of 14 years or older who is charged with an offence referred to in the *Third Schedule* shall be detained in a prison where a magistrate feels there is a substantial risk that the child may cause harm to other children in a secure residential facility.
- (4) Where a magistrate issues a direction that a child be detained in prison, the magistrate shall record the reasons for issuing such a direction.
- (5) Where a magistrate issues a direction for the detention of a child pursuant to subsection (1)(c), the child shall appear before the Court at a time and place to be determined by the Court.
- (6) Where a child appears before a Court pursuant to subsection (5), a magistrate shall
- (a) determine whether or not the detention remains necessary;
  - (b) where ordering further detention of the child, record the reasons for his decision;
  - (c) consider a reduction of the amount of bail or recognizance, where applicable;

- (d) inquire whether or not the child is being properly treated and kept under suitable conditions; and
- (e) where he is satisfied that the child is not being properly treated and kept under suitable conditions, inspect and investigate the treatment and conditions and make appropriate remedial recommendations to the Minister.

#### **Postponement of an initial inquiry**

**31.(1)** A magistrate may postpone the proceedings of an initial inquiry for a period not exceeding 14 days for the purposes of

- (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) planning 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 is required;
- (g) noting a confession;
- (h) noting an admission;
- (i) holding an identity parade;
- (j) securing an attorney-at-law to represent the child; or
- (k) any other matter which a magistrate deems necessary.

(2) Where the proceedings of an initial inquiry are postponed pursuant to paragraphs (g), (h) or (i) of subsection (1), a magistrate shall inform the child of his right to have his parent or an appropriate adult present during the proceedings.

(3) Where the initial inquiry is not concluded within 14 days and subject to section 32, the inquiry shall be closed and the prosecutor shall set the matter down for trial in the Court.

#### **Postponement of initial inquiry for a more detailed assessment**

32.(1) A magistrate may postpone the proceedings of an initial inquiry for a period not exceeding 14 days where there are exceptional circumstances warranting a further assessment of the child, and where these circumstances relate to

- (a) the possibility that the child may be a danger to others or to himself;
- (b) the fact that the child has a history of repeatedly committing offences or absconding;
- (c) the social welfare history of the child;
- (d) the possible admission of the child to counselling, a substance abuse programme, a therapeutic treatment programme or other intensive programme; or
- (e) the possibility that the child may be a victim of sexual or other abuse.

(2) A magistrate may order that a psychiatrist be appointed to conduct the assessment referred to in subsection (1) and that 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 secure residential facility or a place of assessment.

#### **Decision regarding diversion**

33.(1) A magistrate shall ascertain whether a matter before him may be diverted after consideration of the following:

- (a) any recommendations made by the prosecutor;
- (b) the assessment report;

- (c) the views of all persons required to be present, pursuant to section 25(1), at the initial inquiry and any information provided by those persons;
  - (d) any information requested pursuant to section 27(2)(c); and
  - (e) the willingness of the child to acknowledge responsibility for the offence.
- (2) Where a magistrate decides that the matter may be diverted, the magistrate shall issue a direction for diversion in the prescribed manner in respect of the child concerned.
- (3) In addition to the diversion options stated in section 36, a magistrate 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 section 36.

#### **Purposes of diversion**

- 34.** The purpose of diversion is to
- (a) encourage the child to be accountable for the harm which he has caused;
  - (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 how the harm has impacted 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 stigmatising the child and the adverse consequences flowing from being subject to the criminal justice system; and
- (h) prevent the child from having a criminal record.

**Child to be considered for diversion under certain circumstances**

**35.** A child shall be considered for diversion where

- (a) the child and his parent or an appropriate adult, consent to the diversion and the diversion option;
- (b) the child understands his 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.

**Levels of diversion options**

**36.(1)** At the initial inquiry, a magistrate, in directing a diversion option in respect of a child, may direct a level one, level two or level three diversion option and in selecting the level that is appropriate for the child, a magistrate shall consider the

- (a) age and developmental needs of the child;
  - (b) background of the child;
  - (c) educational level, cognitive ability and the environmental circumstances of the child;
  - (d) proportionality of the option recommended or selected to the circumstances of the child; and
  - (e) nature of the offence and the interests of the community or society.
- (2)** A level one diversion option referred to in subsection (1) 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 3 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 3 months;
  - (f) the issue of a positive peer association order in the prescribed manner in respect of a specified person in a specified place for a period not exceeding 3 months;
  - (g) the issue of a family time order in the prescribed form for a period not exceeding 3 months;
  - (h) the issue of a good behaviour order in the prescribed form;
  - (i) the issue of an order prohibiting the child from visiting, frequenting or appearing at a specified place in the prescribed form;
  - (j) referral to counselling or therapy for a period not exceeding 3 months;
  - (k) compulsory attendance at a specified place for a specified vocational or educational purpose for a period not exceeding 5 hours each week, for a maximum of 3 months;
  - (l) symbolic compensation to a specified person or an institution; and
  - (m) restitution of a specified object to a specified victim of an alleged offence where the object concerned may be returned or restored.
- (3) A level two diversion option referred to in subsection (1) includes
- (a) the options referred to in subsection (2), except that the maximum periods referred to in that subsection, shall for the purposes of this subsection, be 6 months;

- (b)* compulsory attendance at a specified institution for a vocational or an educational purpose for a period not exceeding 8 hours each week, for a maximum of 6 months;
  - (c)* the performance of some service without remuneration for the benefit of the community under the supervision or control of an organisation, institution, or a specified person or group identified by a probation officer effecting the assessment, for a maximum period of 50 hours, and to be completed within a maximum period of 6 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; and
  - (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.
- (4) A level three diversion option referred to in subsection (1) includes
- (a)* a referral to a programme which does not exceed 6 months and which has a residential requirement that must not exceed 35 days in total and 21 consecutive days during the operation of the programme;
  - (b)* the performance of some service without remuneration for the benefit of the community under the supervision and control of an organisation, institution, or a specified group of persons, identified by a probation officer and for a period not exceeding 160 hours which shall be completed within 12 months and no more than 35 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 6 months and no more than 35 hours per week; and
  - (d)* referral to counselling or therapeutic intervention in conjunction with any of the options listed in this subsection.



(5) A level three diversion option shall apply to a child who is the age of 14 years or older where the relevant enactment under which the offence is committed imposes a sentence of detention.

(6) On the selection of a diversion option, the Court shall designate a probation officer or other suitable person to monitor the compliance of the child with the selected diversion option and where the child fails to comply with any condition of the diversion option, the probation officer or other suitable person shall notify the Court of the failure.

**Minimum standards applicable to diversion and diversion options**

37.(1) A child may be required to perform community services as an element of diversion, with due consideration being given to the age and development of the child.

(2) A diversion option shall

- (a) promote the dignity and well-being of the child, and the development of his sense of self worth and ability to contribute to his 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 Chief Probation Officer shall keep a register of all of the children who have been subjected to diversion.

**Failure to comply with diversion direction**

38.(1) Where a child fails to comply with a diversion option, a magistrate shall, on being notified of such failure in the prescribed manner, issue

- (a) a warrant for the apprehension of the child; or

(b) a written notice to the parent to have the child appear before a magistrate.

(2) Where a child appears before the magistrate pursuant to subsection (1), a magistrate shall inquire into the reasons for the failure of the child to comply with the diversion direction and unless the prosecutor decides to proceed with the prosecution of the child concerned, a magistrate may, after consideration of the views of any person present at the initial inquiry

(a) apply the same diversion option with altered conditions;

(b) apply any other diversion option; or

(c) issue an appropriate direction that will assist the child and his family to comply with the diversion option initially applied.

(3) Where the prosecutor decides to proceed with the prosecution of the matter, the matter shall be set down for trial in the Court and section 43 shall apply with the necessary changes required by the context.

#### **Development of diversion options**

39. The Minister may make regulations to develop other suitable diversion options.

#### **Protection proceedings**

40.(1) Where it appears during proceedings at an initial inquiry that a child is in need of care and protection as described in section 5(1) of the *Child Protection Act, 2024* (Act 2024-), and that it is desirable to deal with the child under the provisions of that Act, a magistrate shall stop the initial inquiry and deal with the matter as if it were commenced under the *Child Protection Act, 2024*.

(2) Notwithstanding the generality of subsection (1), a magistrate shall stop the initial inquiry and deal with the matter as if it were commenced under the *Child Protection Act, 2024* where 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 such offences;
- (b) is allegedly abusing dependence producing substances; or
- (c) does not live at his 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.

**Referral of matter for trial and detention pending trial**

**41.(1)** Where a child has been charged with an offence listed in the *Third Schedule* the child shall appear in the Criminal Division of the High Court in accordance with the *Supreme Court of Judicature Act, Cap. 117A*.

(2) In relation to offences that are triable summarily or on indictment as listed in the *Second Schedule*, the magistrate shall determine that the offence be tried summarily.

(3) Any information obtained

- (a) by a probation officer during the assessment of a child; or
- (b) during the initial inquiry in respect of a child,

shall not be admissible in any court proceedings against the child pursuant to this Act.

(4) The magistrate may conduct proceedings to determine whether a child should be detained in a secure residential facility pending trial for offences listed in the *First Schedule* or the *Second Schedule*, where diversion has not taken place and the matter has not been handled in the manner specified by section 40.

- (5) A child referred to in subsection (1) shall be detained in a secure residential facility pending trial.

## PART VI

### COURT PROCEEDINGS

#### **Conduct of proceedings relating to child in Court**

- 42.(1) At the commencement of the proceedings, the Court shall
- (a) inform the child of the nature of the allegations against him;
  - (b) inform the child of his right to
    - (i) legal representation by an attorney-at-law;
    - (ii) the presence of his parent or appropriate adult at the proceedings;
    - (iii) remain silent; and
  - (c) explain to the child the procedures to be followed pursuant to this Act or any other relevant enactment

in a manner that can be understood by a child.

- (2) The proceedings in the Court shall be conducted in an informal manner in order to encourage maximum participation by the child and his parents or an appropriate adult.

- (3) Where a child refuses to have his parent or an appropriate adult present at the proceedings referred to in subsections (1) and (2), or where a parent of a child or an appropriate adult is not present or cannot be traced and an attorney-at-law is not available, the police officer in charge of the investigation relating to the child, shall request a person to act as an independent observer and such independent observer shall be present at the proceedings.

(4) For the purposes of this section an “independent observer” means a social worker, a child protection officer or such other person as may be authorized by the Court.

#### **Treatment of a child in Court**

**43.(1)** A child shall not be subjected to the wearing of leg irons when appearing in the Court, and handcuffs may only be used where there are exceptional circumstances that warrant their use.

(2) A child held at a police station or a Court shall be kept separate from adults 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.

(4) Where a child is transported to and from the Court he shall be transported separate from adults.

(5) The Commissioner of Police shall issue directives concerning the treatment and conditions of a child while being held in detention at Court.

#### **Criminal responsibility**

**44.(1)** The criminal responsibility of a child shall be proved by the prosecution beyond reasonable doubt.

(2) The prosecutor or the attorney-at-law representing the child may request the Court to order an evaluation of the child by a suitably qualified person.

(3) The evaluation referred to in subsection (2) shall be conducted at the expense of the Government.

(4) Where an order has been made by the Court pursuant to subsection (2), the person identified to conduct an evaluation of the child shall furnish the Court with a written report of the evaluation within 30 days of the date of the order.

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

(6) The person who conducts the evaluation may be called to attend the Court proceedings and to give evidence and, if called, shall receive remuneration from the Government.

#### **Separation and joinder of trials involving child and adult**

45.(1) Where 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 joinder of trials under subsection (1) shall be made to the Court and the child shall appear after notice is given to him in the prescribed manner.

(3) Where the Court grants an application for a joinder of trials, the matter shall be transferred to the relevant Court, and that Court shall afford the child concerned all such benefits conferred on a child under this Act.

#### **Time limits relating to conclusion of trials**

46.(1) The Court shall conclude the trial of an accused child within a period not exceeding 6 months and shall ensure that adjournments of the trial are limited in number and duration.

(2) Sections 29 and 32, shall apply, with the necessary changes required by the context, to the Court where the child is appearing in the Court for the first time is in detention.

(3) Where a child remains in detention and the trial of the child is not concluded within 6 months from the date on which the child has pleaded to the charge, the child shall be released from detention, unless he is charged with an offence listed in the *Third Schedule*.

#### **Court may divert matter**

47.(1) Where 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 where the prosecutor indicates that the matter may be diverted.

(2) Sections 33 to 38 shall apply with the changes required by the context where the Court makes an order for diversion.

(3) Where the Court makes an order for diversion, it shall postpone the proceedings pending the compliance of the child with the diversion order.

(4) The Court shall, acquit the child of all charges in question, on receipt of a report from a probation officer or suitable person referred to in section 36(6) that a child has successfully complied with a diversion order.

(5) An acquittal of the child may be made in the absence of the child.

(6) Where a child fails to comply with a diversion order, section 38 shall apply with the necessary changes required by the context.

#### **Privacy and confidentiality**

**48.** A person shall not be present at a sitting of the Court in a matter relating to a child unless

- (a) the presence of the person is necessary in connection with the proceedings of the Court; or
- (b) the Court has granted the person permission to be present.

#### **Prohibition of the publication of certain matters**

**49.(1)** 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 18 years appearing at any proceedings before the Court.

(2) Subject to subsection (3), a probation officer, pursuant to this section, shall not preclude

- (a) access to information pertaining to a child where such access would be in the interest, safety or welfare of the child;

- (b) the publication, in the form of a report, of

    - (i) information for the purpose of reporting any question of law relating to the proceedings in question; or
    - (ii) any decision or ruling given by the Court on such a 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 where such publication would be in the interest, safety or welfare of the child or children in general.
- (3) The reports referred to in subsection (2)(b) and (c) shall not mention
- (a) the name of the person charged;
  - (b) the person against whom or in connection with whom the offence in question is alleged to have been committed;
  - (c) any witness at such proceeding; or
  - (d) the place where the offence in question was alleged to have been committed.
- (4) Subject to subsection (5), in relation to any proceedings in any Court
- (a) no newspaper report, radio broadcast, television broadcast or post on a social media site in relation to proceedings under this Act shall reveal the name, address or school, or include any particulars calculated to lead to the identification of any child in respect of whom the proceedings are taken, or as being a witness in the proceedings; and
  - (b) no picture shall be published of any child so concerned in the proceedings.
- (5) The Court may, in any case, where satisfied that it is in the interest of justice or the public to do so, by order dispense with the requirements of this section to such extent as may be specified in the order.



(6) A person who publishes in a newspaper, broadcasts by radio or television, posts on a social media site or shares via a messenger application any matter in contravention of this section, is guilty of an offence and is liable on summary conviction to a fine of \$5 000 or to imprisonment for a term of 2 years or to both.

## PART VII

### SENTENCING OF A CHILD

#### **Child to be sentenced in accordance with this Part**

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

(2) Where the provisions of this Act regarding sentencing options, conflict with those provided for pursuant to any other relevant enactment, the sentencing options under this Act shall prevail.

#### **Pre-sentence reports**

**51.(1)** Prior to the imposition of sentence on a child, the Court shall

- (a) request a pre-sentence report prepared by a probation officer; and
- (b) hold a pre-sentence conference with the probation officer, where all considerations relevant to the child's case and possible sentencing options are discussed.

(2) Pursuant to subsection (1), the probation officer shall complete the report, as soon as possible, but no later than 8 weeks following the date upon which such report was requested.

(3) The Court may dispense with a pre-sentence report where

- (a) a child is convicted of an offence referred to in the *First Schedule*; or
- (b) requiring such a 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 received and considered by the Court.

(4) Where a 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 received and considered by the Court prior to the imposition of the sentence.

(5) For the purposes of subsection (3), “a sentence with a residential requirement” includes a sentence where the residential requirement is suspended.

### **Purposes of sentencing**

52. The purposes of sentencing pursuant to 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 which 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.

### **Community based sentences**

53.(1) The Court may, as a requirement in relation to a penalty for an offence, sentence a child to detention in a secure residential facility for an initial period and thereafter require the child to serve the remainder of the period of the sentence providing a service in the community.

(2) A sentence which allows a child to remain in the community and which may be imposed pursuant to this Act includes

- (a) any of the options referred to in section 36(3);
- (b) placement under a supervision and guidance order in the prescribed form for a period not exceeding 3 years;
- (c) in cases that warrant such specialised intervention, referral to counselling or therapy in conjunction with any of the options listed in this section for a period of time as the Court considers fit;
- (d) where 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, for no more than 35 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 160 hours and which shall be completed in 12 months; and
- (f) any other sentence, subject to section 59, which is appropriate to the circumstances of the child and is in keeping with the principles of this Act and which, where it includes a period of time, shall not exceed 12 months.

(3) Before a child from the age of 12 years to 14 years is sentenced pursuant to subsection (2)(e), due consideration must be given to the age, development and compulsory school attendance of the child.

#### **Restorative justice sentences**

**54.(1)** Where 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 55 shall apply where 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 shall
  - (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) Where 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) Where a child who has been sentenced in accordance with an order arising from a family group conference fails to comply with that order, the probation 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 where the child appears before the Court pursuant to such warrant, the Court shall impose an appropriate sentence on the child.

#### **Family group conference**

**55.(1)** Where a child has been referred to appear at a family group conference pursuant to section 54, a probation officer shall be appointed by a Court to conduct the family group conference and he shall within 14 days, but not later than 21 days after such 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.

- (2) The following persons shall attend a family group conference
  - (a) the child and the parent of the child or an appropriate adult;
  - (b) any person reasonably requested by the child;

- (c) the probation officer;
  - (d) a police officer;
  - (e) the victim of the alleged offence which the child committed and where the victim is under the age of 18 years, the parent of the victim or an appropriate adult;
  - (f) the attorney-at-law representing the child where applicable;
  - (g) a member of the community in which the child resides recommended by the probation officer; and
  - (h) any person authorised by the probation officer to attend the family group conference.
- (3) 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 pursuant to subsection (4) as they deem fit.
- (4) A plan referred to in subsection (3)
- (a) may include
    - (i) the application of any option contained in section 36(2) or (3); or
    - (ii) any other plan that is appropriate for the child, his family and the circumstance except that such a 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 of the child or an appropriate adult;
    - (iii) specify the persons or organisations to provide the services referred to in subparagraph (ii);

- (iv) state the responsibility of the child and the parents of the child or an appropriate adult; and
  - (v) include such other matters relating to the education, recreation and welfare of the child as are relevant.
- (5) The probation 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 Court.
- (6) Where a child fails to comply with any condition of the plan agreed to in a family group conference, the probation officer shall notify the Court in writing of such failure, and the Court may impose a sentence under section 56 or 58.
- (7) Where the participants of a family group conference fail to agree on a plan, the probation officer shall close the family group conference and refer the matter back to the Court for consideration of another diversion option.
- (8) The proceedings of a family group conference shall be confidential and no statement made by a participant in the family group conference may be used as evidence in any subsequent court proceedings.

**Sentences involving correctional supervision**

- 56.(1)** The Court may impose a sentence of correctional supervision for a period not exceeding 3 years on a child over the age of 12 years.
- (2) The whole or any part of the sentence imposed pursuant to subsection (1) may be postponed or suspended, with or without conditions referred to in paragraphs (a), (b), (c), (d), (e), (f), (h) and (i) of section 60(3).

**Sentence with a compulsory residential requirement**

57.(1) A sentence involving a compulsory residential requirement shall not be imposed on a child unless the Court is satisfied that such a 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) A Court imposing any sentence involving a compulsory residential requirement on a child, 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 secure residential facility, subject to section 58; or
- (b) a prison, subject to section 59.

**Referral to secure residential facility**

58.(1) A sentence which involves residing in a secure residential facility shall not exceed 3 years.

(2) A child shall not be required to reside in a secure residential facility beyond the age of 18 years.

(3) A person detained at a secure residential facility shall not be automatically transferred from a secure residential facility to a prison upon attaining the age of 18 years.

**Referral to prison**

**59.(1)** A sentence of imprisonment shall be used as a sentence of last resort and the sentence shall not be imposed unless

- (a) the child is the age of 14 years or older at the time of the commission of the offence;
- (b) substantial and compelling reasons exist for imposing a sentence of imprisonment, which may include
  - (i) conviction of an offence referred to in the *Second Schedule* or the *Third Schedule*; or
  - (ii) a previous failure to respond to alternative sentences, including sentences with a residential requirement; and
- (c) the Court is of the opinion that none of the other methods in which the case may legally be dealt with is suitable,

and the Court may sentence the child to be detained for such period, not exceeding the maximum term of imprisonment with which the offence is punishable in the case of a person aged 18 years or over, as may be specified in the sentence.

(2) A sentence of imprisonment shall not be imposed on a child in respect of an offence referred to in the *First Schedule*.

(3) Where 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 secure residential facility prior to the sentence being announced in the Court.

(4) A child sentenced to imprisonment shall not be accommodated with adult prisoners.

(5) Corporal punishment and cruel, inhuman or degrading measures shall not be inflicted on a child detained in a prison pursuant to this section.



**Postponement or suspension of passing sentence**

60.(1) The passing of any sentence may be postponed, with or without one or more of the conditions referred to in subsection (3), for a period of 3 months.

(2) The whole or any part of any sentence may be suspended, with or without one or more conditions referred to in subsection (3), for a period not exceeding 12 months.

(3) The conditions referred to in subsections (1) and (2) may be any condition appropriate to the circumstances of the child which is in keeping with the principles of this Act and which promotes the reintegration of the child into his 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;
- (f) attendance at a specified time and place of a family group conference;
- (g) placement under the supervision of a probation 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 any diversion option referred to in paragraphs (d), (e), (f), (g), (h), (i), (j) or (k) of section 36(2).

(4) Where the Court has postponed the passing of a sentence pursuant to subsection (1) on one or more conditions, the Court may request the probation officer concerned to submit regular reports indicating the compliance of the child with the conditions referred to in this section.

(5) The conviction of a child in respect of whom passing of a sentence has been postponed shall be expunged from any record where the child has met all the conditions imposed or at the expiration of the period in question, as the case may be.

**Penalty in lieu of fine or imprisonment**

**61.** Where the Court convicts a child of an offence for which a fine or imprisonment is stated by an enactment as the penalty, the Court 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 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, where 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.

**Prohibition on certain forms of punishment**

**62.(1)** The sentence of death shall not be pronounced on a child, recorded against a child or imposed on a child.

- (2) A sentence of life imprisonment shall not be imposed on a child.
- (3) A sentence of flogging or whipping shall not be imposed on a child.

**Notice to parent of child**

**63.(1)** Where it appears to a 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 of the child 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 a person for any
  - (i) loss caused to the person's property, whether the loss was an element of the offence charged 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 prosecutor, may decide to call on the parent or an appropriate adult to show cause, as directed by the Court, why the parent of the child or an appropriate adult should not pay the compensation.

(2) The Court may call on the parent of the child or an appropriate adult who is present in Court to show cause during the proceedings.

(3) The Court in all cases, instead of acting under subsection (2), may cause the Registrar of the Court to give written notice to the parent of the child or an appropriate adult to show cause why the parent of the child or an appropriate adult should not pay the compensation.

(4) Where the Court calls on the parent of a child or an appropriate adult under subsection (2) or the Registrar of the Court issues a notice under subsection (3),

- (a) the Court shall put 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 to the parent of the child or an appropriate adult within a reasonable time before the proceedings to show cause.

**Proceedings to show cause**

- 64.(1)** At the proceedings to show cause referred to in section 63,
- (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 of a child or appropriate adult may require a witness whose evidence is admitted under paragraph (a) to be recalled to give evidence; and
  - (d) the parent of a child 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 pursuant to section 62.
- (3) Where the parent is called on to show cause on the prosecution's application, the prosecution shall be a party to the proceedings to show cause.
- (4) Where the parent is called on to show cause on the Court's own initiative, the prosecutor may at the proceedings
- (a) appear and give the Court the assistance it may require; or
  - (b) intervene as a party with the permission of the Court.
- (5) Where 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 63(1)(b)(i), the Court may make an order requiring the parent to pay compensation.

- (6) An order made pursuant to subsection (5) shall direct that
- (a) the amount shall be paid by a time specified in the order or by instalments specified in the order; and
  - (b) the amounts shall be paid to the Registrar 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 that any order would have on the capacity of the parent to provide for his child.
- (8) The Court shall proceed under this section in the absence of the parent where the Court is satisfied that the parent has been given notice of the proceedings to show cause under section 63.

## PART VIII

### LEGAL REPRESENTATION

#### **Child to be provided with legal representation**

**65.** A child shall be provided with legal representation by the Government at all of the stages of any administrative or criminal proceedings under this Act.

#### **Requirements to be complied with by attorney-at-law**

- 66.** An attorney-at-law representing a child shall
- (a) conduct the best defence for the child at all of the stages of any administrative or criminal proceedings under this Act taking into account the best interests of the child;

- (b) allow the child, as far as is reasonably possible, to give independent instructions concerning the case;
- (c) inform the child of his right to
  - (i) be informed of the nature of the offence or offences alleged to have been committed;
  - (ii) seek the advice of an attorney-at-law;
  - (iii) have a parent or an appropriate adult present where he is to be questioned, interviewed or assessed in respect of an offence or offences alleged to have been committed;
  - (iv) remain silent;
  - (v) be informed of the procedures to be followed pursuant to this Act and any other relevant enactment that is in force;
- (d) promote diversion where appropriate, but may not influence the child to acknowledge responsibility; and
- (e) make reasonable efforts to ensure that the trial is conducted without delay.

## PART IX

### GENERAL PROVISIONS AS TO PROCEEDINGS IN COURT

#### **Extension of power to take depositions**

**67.(1)** Subject to subsection (2), where the Court is satisfied by the evidence of a medical practitioner that the attendance before the Court of any child in respect of whom the offence is alleged to have been committed would involve serious danger to his 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 Judge or magistrate before whom it was taken.

(2) The deposition taken pursuant to subsection (1) shall not be admissible in evidence against the accused child unless it is proved that

- (a) reasonable notice of the intention to take the deposition has been given to him; or
- (b) it was taken in the presence of the accused child; and
- (c) his attorney-at-law had the opportunity to question the child making the deposition.

## PART X

### SECURE RESIDENTIAL FACILITY

#### **Secure residential facility**

**68.** For the purposes of this Part, a “secure residential facility” means

- (a) a residential facility designated under this Act for the purposes of the
  - (i) assessment under section 8;
  - (ii) detention of a child prior to or after an initial inquiry is conducted under this Act;
  - (iii) detention of a child pending trial pursuant to section 40;
  - (iv) reception and rehabilitation of a child who has been sentenced to a term of detention in a secure residential facility under this Act; and
- (b) residential protection and treatment centre for the purposes of reception and rehabilitation of a child who requires psychiatric or psychological treatment or treatment for substance abuse pursuant to section 40 and section 79.

**Designation of a secure residential facility**

**69.** The Minister may by order designate and cause any lands or buildings that he may think fit to be used as a secure residential facility, and any lands or buildings authorised to be so used shall be subject to this Act.

**Designation of the Government Industrial School as a secure residential facility**

**70.(1)** The Government Industrial School is designated as a secure residential facility for the purposes of this Act.

**(2)** In this section, the Government Industrial School refers to the school situate at Dodds Plantation in the parish of Saint Philip.

**Detention of a child**

**71.** A child shall not be detained in custody in a secure residential facility unless that child

- (a)** is being detained before the making of an order or the imposition of a sentence by a judge or magistrate;
- (b)** has been committed to custody or detention by a sentence or an order of a judge or magistrate.

**Child Justice Board**

**72.(1)** The Minister shall appoint a Board to be known as the “Child Justice Board”.

**(2)** The constitution of the Child Justice Board and matters related thereto are those set out in the *Fourth Schedule*.

**(3)** The members of the Child Justice Board shall be paid such remuneration as the Minister determines.



**Functions of the Child Justice Board**

73.(1) The Child Justice Board shall be responsible for the formulation of the policy of the secure residential facilities and shall give directions to the Director of a secure residential facility on the following:

- (a) the management and supervision of the secure residential facility;
- (b) the welfare of the children, including their education, training, recreation, conduct and safety;
- (c) the welfare and conduct of the staff at a secure residential facility; and
- (d) the proper maintenance of the secure residential facility.

(2) The Child Justice Board shall immediately notify the Minister of any abuses taking place at a secure residential facility of which the Board has knowledge.

**Appointment of a Director**

74.(1) The Minister shall appoint a Director of a secure residential facility designated as such under this Act.

(2) The Principal of the Government Industrial School shall for the purposes of this Act be considered to be a Director.

(3) The Director shall be the chief administrator and shall be responsible for the operation, maintenance, management and inspection of that secure residential facility.

**Staff**

75.(1) The Director shall be provided with such staff appointed in accordance with subsection (2), as is required for the purpose of carrying out the functions of a secure residential facility.

(2) The staff required for the purposes of subsection (1) shall be appointed in accordance with the *Public Service Act*, Cap. 29.

**Status of certain officers of a secure residential facility**

- 76.(1) An officer of a secure residential facility, who is in charge of
- (a) any child who is sent to that facility under this Act for the purpose of conveying him to or from the facility; or
  - (b) bringing a child back to the facility in case of his escape or refusal to return,

shall, for such purpose and while engaged in the duties set out in paragraph (a) and (b), have all such powers, authorities, protection and privileges of a constable under the *Police Act, Cap. 167*.

- (2) For the purposes of subsection (1), an “officer” is a person appointed or employed in the manner set out in section 75(2).

**Maintenance of records**

- 77.(1) The Director shall keep in a secure place all records pertaining to a child who is or has been detained in custody in the secure residential facility.
- (2) The Director and staff shall keep the records of a child who is or has been detained in custody in the secure residential facility confidential and shall not disclose those records unless required by an enactment or by an order of the court.
- (3) A person who contravenes subsections (1) or (2) is guilty of an offence and is liable to a fine of \$5 000 or to imprisonment for 12 months or to both.

**Establishment of secure residential facility programmes**

78. A Director shall establish and operate the following programmes:
- (a) a curriculum appropriate to the needs of each child in accordance with the provisions of the *Education Act, Cap. 41*;
  - (b) voluntary recreational programmes that are appropriate for children;

- (c) voluntary social and entertainment programmes that are appropriate for children;
- (d) voluntary religious services;
- (e) counselling programmes;
- (f) medical and dental treatment programmes;
- (g) visiting programmes; and
- (h) compulsory or voluntary work programmes.

### **Medical or Psychiatric Treatment**

**79.(1)** Where a child is moved from a secure residential facility to a

- (a) hospital facility;
- (b) psychiatric facility; or
- (c) residential protection and treatment centre

for examination or treatment, the child is not discharged from custody and, during the time the child is hospitalized or treated, the child shall be deemed to be in the custody of the Director of the secure residential facility in which the child was detained before hospitalization or treatment.

(2) The time spent by a child in a hospital, a psychiatric facility or residential protection and treatment centre is considered to be the same as if the child had spent that time in the secure residential facility in which the child was detained before hospitalization or treatment.

(3) Where the date for the discharge of a child from a secure residential facility arises while the child is hospitalized or being treated, the child shall be discharged from custody of the secure residential facility on that date, and the Director of the secure residential facility in which the child was detained before hospitalization or treatment shall take the necessary steps to remove the child from custody of the a secure residential facility at that time.

(4) Notwithstanding subsection (3), no child who is hospitalized in a psychiatric facility shall be discharged from that psychiatric facility except in accordance with the provisions of the *Mental Health Act*, Cap. 45.

(5) The Director shall notify the

(a) parent of a child or an appropriate adult; and

(b) Director of Child Protection

where a child is moved from a secure residential facility to a hospital, a psychiatric facility or residential protection and treatment centre for examination or treatment.

(6) The Director may consent to medical treatment for a child who is detained in custody in a secure residential facility where the

(a) person is under the age of 16 years and requires medical treatment;

(b) consent of a parent of a child or an appropriate adult is required by an enactment and is refused or otherwise not obtainable.

#### **Transfer of a child to another secure residential facility**

80. The Director may apply to the Court for an order to transfer a child from one secure residential facility to another.

#### **Emergency**

81.(1) The Director may declare a situation to be an emergency where there is the occurrence of fire, riot or disturbance, contagious disease or a natural disaster.

(2) Where an emergency is declared by the Director under subsection (1), the Director may

(a) call off-duty staff to work;

(b) require on-duty staff to remain on-duty;

- (c) give and enforce orders respecting the security and control of the secure residential facility to all persons who are on the premises during an emergency;
- (d) confine children to their rooms or to such other places as the Director considers appropriate and necessary; and
- (e) take such other steps and make such other orders as the Director considers appropriate and necessary in order to ensure that the secure residential facility remains secure and that the emergency is safely and satisfactorily dealt with.

#### **Notification of death, injury or serious illness**

**82.(1)** Where a child who is detained in a secure residential facility dies, the Director shall immediately notify

- (a) the parent or the appropriate adult in respect of that child; and
- (b) the Coroner and the Police Service.

(2) Where a child who is detained in a secure residential facility is injured or becomes seriously ill, the Director shall

- (a) immediately notify the parent or the appropriate adult in respect of that child; and
- (b) seek the appropriate medical treatment in respect of that child.

#### **Resources of the secure residential facility**

**83.** The resources of the secure residential facility are such money as Parliament may provide for the purpose of operating the secure residential facility.

#### **Responsibilities of a child in custody**

**84.(1)** A child shall, upon being admitted to a secure residential facility, be informed of the provisions of this Part and of the disciplinary action that may be

taken for violation of or failure to comply with a provision of this Part governing the conduct of a child detained in custody in a secure residential facility.

- (2) A child who is detained in a secure residential facility
- (a) is subject to the rules of conduct and discipline as set out in this Act or regulations made under this Act; and
  - (b) shall participate in the programmes devised by the Director under the authority of this Act or regulations made under this Act.

### **Infractions**

- 85.(1) A child who is detained in a secure residential facility shall
- (a) maintain the living and work areas in a clean and tidy condition;
  - (b) be prompt in the performance of regular duties of work that may be assigned to the child;
  - (c) comply with all reasonable instructions given by a member of staff;
  - (d) maintain a high level of personal cleanliness;
  - (e) respect the rights and dignity of other children in the facility; and
  - (f) make reasonable efforts to avoid behaviour that interferes with or is disturbing to any other person in the facility.
- (2) A child who is detained in a secure residential facility and who violates or fails to comply with subsection (1) commits an infraction.

### **Misconduct**

- 86.(1) No child detained in a secure residential facility shall
- (a) assault or threaten to assault another person;
  - (b) engage in sexual contact;
  - (c) damage private or public property;
  - (d) have possession of drugs or deal in drugs with any other person;

- (e) bring drugs into or take drugs out of a place of secure custody;
- (f) escape or be unlawfully at large from a place of secure custody;
- (g) give or offer a bribe or reward to any other person or receive a bribe or reward from any other person;
- (h) disobey or fail to obey a reasonable order of a member of staff;
- (i) refuse or fail to do assigned work;
- (j) waste food;
- (k) damage equipment or material;
- (l) commit an indecent act by gesture, actions or in writing toward another person;
- (m) gamble;
- (n) create or incite a disturbance likely to endanger the security of a secure residential facility;
- (o) use loud, indecent, abusive, profane or insulting language;
- (p) fail or refuse to observe fire safety rules and regulations or alter, damage or interfere with any fire procedure, fire exit or equipment;
- (q) interfere with the work performance of another child detained in a facility;
- (r) take, or convert for personal use or for the use of another person, any property without the consent of the rightful owner of the property;
- (s) leave an assigned area without proper authority;
- (t) obstruct an investigation conducted or authorized by the Director;
- (u) fail to abide by any term or condition of a reintegration order;
- (v) fail to participate actively in a compulsory programme;

- (w) violate or fail to comply with any enactment governing the conduct of a child detained in a secure residential facility;
  - (x) counsel, aid or abet another person to commit an act that constitutes a violation of or a failure to comply with any enactment;
  - (y) have in his possession an implement made, adapted for use or used for the purpose of facilitating his escape or the escape of another child;
  - (z) have in his possession an implement made, adapted for use or used for the purpose of causing or inflicting injury on another person in the facility; or
- (aa) attempt to do anything referred to in paragraphs (a) to (y).

(2) A child detained in a secure residential facility who violates or fails to comply with subsection (1) commits an act of misconduct.

(3) A member of staff may report a child in relation to an act of misconduct by delivering to the Director a written incident report.

(4) Where a child is accused of committing an act of misconduct, the Director shall

- (a) advise the child of the nature of the accusation;
- (b) conduct an investigation in respect of the accusation; and
- (c) determine whether the child has committed an act of misconduct.

**Power of the Director to impose discipline on a child in a secure residential facility**

87.(1) Corporal punishment and cruel, inhuman or degrading measures shall not be inflicted on a child in a secure residential facility.

(2) The Director may impose disciplinary action on a child in a secure residential facility for any violation of or failure to comply with a provision of this Act or regulations made under this Act governing the conduct of the child in a secure residential facility.



(3) A Director who, after considering the circumstances, determines that a child in a secure residential facility has committed an infraction shall impose one or more of the following forms of disciplinary action:

- (a) verbal warning;
- (b) reduction or suspension of privileges for a definite period of time.

(4) A Director who, after considering the circumstances, determines that a child in a secure residential facility has committed an act of misconduct shall impose one or more of the following forms of disciplinary action:

- (a) verbal warning;
- (b) reduction or suspension of privileges for a definite period of time;
- (c) payment of part or all of the cost of repairing the damage done by the child;
- (d) performance of additional work; or
- (e) confinement for a definite period of time to an area assigned by the Director.

(5) Notwithstanding subsection (4), a Director may recommend to the Director of Public Prosecutions that a court proceeding be instituted against a child in a secure residential facility.

(6) A Director who has taken disciplinary action against a child in a secure residential facility shall advise the child of the appeal procedures.

### **Searches**

**88.(1)** An officer may conduct a search of a child in a secure residential facility where

- (a) the child is being transferred from one part of a secure residential facility to another part of that facility; or
- (b) the child is entering or departing from a secure residential facility.

(2) Where an officer believes, on reasonable and probable grounds, that a child has possession of or access to drugs, weapons or stolen property, the officer may at any time conduct a search of

- (a) all or any part of a secure residential facility;
- (b) a child detained in secure residential facility; or
- (c) the property of a child detained in a secure residential facility.

(3) Where a Director believes, on reasonable grounds, that a member of staff or a visitor to a secure residential facility

- (a) has possession of drugs, weapons or stolen property; or
- (b) is bringing or attempting to bring drugs, weapons or stolen property into or is taking or attempting to take drugs, weapons or stolen property out of the secure residential facility,

the Director may authorize a search of the member of staff, visitor or the property of the member of staff or visitor, including a vehicle in the care and control of the member of staff or visitor, that is located on the premises of the secure residential facility.

(4) No child detained in custody in a secure residential facility shall be searched by a person of the opposite sex.

(5) A child detained in a secure residential facility who refuses to be searched or resists a search may be separated from other children in the facility until the child submits to the search or until there is no longer a need for the search.

(6) For the purposes of this section, an "officer" is a person appointed or employed in the manner set out in section 75(2).

#### **Maintenance of order in secure residential facility**

**89.(1)** An officer of a secure residential facility shall maintain control of the facility by employing such means of reasoning, delaying tactics and other methods that do not involve the use of force against a child detained in a facility.

(2) Notwithstanding subsection (1), officer of a secure residential facility may take the appropriate action necessary

- (a) enforce maintain order within the secure residential facility;
- (b) prevent the child from escaping from the secure residential facility or returning a child to the secure residential facility from which he escaped;
- (c) protect the child or another person;
- (d) prevent the child from damaging property; or
- (e) conduct a search pursuant to section 88,

and such action shall be reasonable and not excessive having regard to the nature of the threat posed by the child and all other relevant circumstances of the case.

(3) An officer shall, where possible and practicable, arrange to have another officer present when taking any action pursuant to subsection (2).

(4) Where an officer takes any action against a child detained in secure residential facility pursuant to subsection (2), within 24 hours of the incident, that officer shall file a written report with the Director indicating the nature of the threat posed by the child and all other relevant circumstances of the case.

(5) For the purposes of this section, an "officer" is a person appointed or employed in the manner set out in section 75(2).

### **Grievance procedures**

90.(1) Where a child detained in a secure residential facility believes that a member of staff has treated him in an unreasonable, unjust, oppressive, improperly discriminatory, arbitrary, unfair, unduly harsh or inappropriate manner, that child, his parent, appropriate adult or his attorney-at-law may file a grievance with the Director in the prescribed form within 10 days after the occurrence of the incident that gave rise to the grievance.

(2) Within 5 days after receiving the grievance referred to in subsection (1), the Director shall

- (a) hold a meeting with the child, his parent, appropriate adult or his attorney-at-law and the child shall be given an opportunity to explain the circumstances and the grounds of the grievance;
- (b) make a decision with respect to the grievance;
- (c) deliver to the child, his parent, appropriate adult or his attorney-at-law, in writing, the original and a copy of the decision, including reasons; and
- (d) indicate to the child, parent, appropriate adult or attorney-at-law that the appeal procedure under subsection (3) is available.

(3) A child who is aggrieved by a decision made under subsection (2) may appeal to a Judge in Chambers.

(4) Where the Director or a member of staff of the secure residential facility was involved in the incident that gave rise to the grievance, the child, his parent, appropriate adult or his attorney-at-law may appeal to a Judge in Chambers.

**Discharge of child from a secure residential facility**

**91.(1)** The Director shall discharge a child from a secure residential facility where

- (a) a magistrate or judge orders the discharge;
- (b) the term of the order or the custodial portion of the sentence made by a magistrate or judge has expired; or
- (c) the term of detention in a secure residential facility has expired; or
- (d) the Minister, upon consultation with the Director, approves the discharge pursuant to section 92.

- (2) When a child is discharged from a secure residential facility, the Director
- (a) may deliver to the child the remaining quantities of any medication currently being taken by the child; and
  - (b) shall deliver to the child any sums of money belonging to the child that are under the Director's control.
- (3) Sums of money referred to in paragraph (2)(b) may be delivered to the child in the form of a cheque made jointly payable to the child and to an appropriate co-payee chosen by the Director.
- (4) A Director may issue clothing to a child who is being discharged and who does not have suitable clothing.
- (5) A Director may reimburse a child upon discharge in an amount that the Director considers fair and reasonable for any property of the child that has been lost or damaged by the secure residential facility.
- (6) Where reasonably possible, upon a child's discharge the Director shall deliver to the child, parent or appropriate adult all of the child's property that is located in the secure residential facility.
- (7) A child, parent or appropriate adult, as the case may be, shall upon request give to the Director a receipt for all medication, sums of money, clothing or other property received under this section.
- (8) A Director may disburse funds in order to transport a child to the child's destination upon discharge.

**Discharge approval by Minister**

92. The Minister may, on consultation with the Director, approve the discharge of a child from a secure residential facility on application made to him in writing by an appropriate adult, attorney-at-law representing the child or a parent where that child has served two-thirds of his sentence or term of the order or the custodial portion of the sentence made by a magistrate or judge.

**Appeal**

93. A person who is aggrieved by a decision made under this Part may, within 14 days of the decision, appeal to a Judge in Chambers.

PART XI

REINTEGRATION

**Establishment of Reintegration Board**

94.(1) There shall be a Board to be known as the "Reintegration Board".

(2) The *Fifth Schedule* has effect with respect to the constitution of the Reintegration Board and otherwise in relation thereto.

**Functions of the Reintegration Board**

95. The functions of the Reintegration Board are to

- (a) hear and consider an application for a reintegration order;
- (b) grant, revoke or suspend a reintegration order;
- (c) assign conditions to a reintegration order;
- (d) maintain a register of its decisions;
- (e) keep statistical and other records in relation to its work; and
- (f) make annual reports to the Minister concerning its work.

**Remuneration of the members of Reintegration Board**

96. The members of the Reintegration Board shall be paid such remuneration as the Minister may determine.

**Staff**

97. The Reintegration Board may appoint and employ such other officers and employees as it deems necessary, on such terms and conditions as it thinks fit.

**Expenses**

98. The expenses of the Reintegration Board shall be defrayed out of the moneys voted for the purpose by Parliament.

**Confidentiality**

99.(1) All documents, information or matters disclosed in the discharge of the functions of the Board shall be regarded as secret and confidential and shall not be disclosed by a member of the Reintegration Board or any person concerned with the Reintegration Board except where those disclosures are made in compliance with

- (a) an order of the High Court; or
- (b) the Laws of Barbados.

(2) A person who contravenes this section is guilty of an offence and is liable on summary conviction to a fine of \$10 000 or to imprisonment for 2 years or to both.

**Protection of members of the Reintegration Board**

100. No action, suit, prosecution or other proceeding shall be brought or instituted personally against any member of the Reintegration Board in respect of any act done *bona fide* in pursuance or execution or intended execution, of the provisions of this Act.

**Eligibility for grant of reintegration order**

**101.(1)** A child detained at a secure residential facility or a prison who has completed two-thirds of his sentence and has a record of good behaviour, shall be eligible for the grant of a reintegration order.

(2) The Director of a secure residential facility or the Superintendent of Prisons shall, at the end of each month or within such period as the Reintegration Board shall determine, submit to the Reintegration Board, a list of the children who will be eligible for the grant of a reintegration order.

(3) The Director of a secure residential facility or the Superintendent of Prisons shall give written notice of eligibility for the grant of a reintegration order to the child, parent or appropriate adult or attorney-at-law of the child who is the subject of the reintegration order within 2 months of the eligibility of the relevant child.

**Application for a reintegration order**

**102.(1)** A child who is eligible for the grant of a reintegration order under section 101, may apply in the prescribed manner to the Reintegration Board for the grant of that order.

(2) An application under subsection (1) shall contain the following particulars:

- (a) the full name and age of the applicant;
- (b) the nature of the offence of which the applicant was convicted and sentenced;
- (c) any other information on which the applicant relies in support of his application; and
- (d) any other information which may be requested by the Reintegration Board.



(3) The Director of a secure residential centre or the Superintendent of Prisons, as the case may be, shall furnish to the Reintegration Board,

- (a) a report prepared by him in respect of the conduct of the applicant while in the secure residential facility or a prison, as the case may be; and
- (b) a copy of a report containing an opinion by a psychiatrist or psychologist or any other person as may be designated by the Reintegration Board stating whether the applicant is fit to be released.

**Grant of a reintegration order**

**103.(1)** The Reintegration Board shall, in determining whether to grant a reintegration order may consider the following factors:

- (a) the conduct of the child while in a secure residential facility or a prison;
- (b) the availability of supervision and support for the child during the period stated in a reintegration order;
- (c) the likelihood that the child will fail to abide by any of the terms and conditions of a reintegration order;
- (d) the benefit of the reintegration order to the child, to the child's family or to other persons;
- (e) the risk to the public posed by the reintegration order being granted to the child;
- (f) the information contained in the reports referred to in section 101(3); and
- (g) such other factors as the Reintegration Board considers relevant.

(3) Within 14 days after receipt of an application under section 101(1) for a grant of a reintegration order, the Reintegration Board shall

- (a) advise the child, parent or appropriate adult or attorney-at-law of the child that is the subject of the reintegration order whether or not the reintegration order is granted;

- (b) indicate any terms and conditions, where the reintegration order is granted; and
  - (c) give reasons where the reintegration order is not granted.
- (4) The Reintegration Board may order the Director of a secure residential facility or the Superintendent of Prisons, as the case may be, to disburse funds to transport a child to and from the child's destination during the period covered in the reintegration order.

### **Reintegration order**

**104.(1)** A reintegration order shall have effect for the period specified therein and shall require the holder of the reintegration order to submit during that period to the supervision of a probation officer appointed by the Chief Probation Officer and shall contain such requirements as the Reintegration Board considers necessary for securing the supervision and facilitating the rehabilitation of the holder of the reintegration order.

(2) Notwithstanding the generality of subsection (1), a reintegration order may include the following terms and conditions:

- (a) attend a school or any other educational or training institution;
- (b) obtain or continue employment or perform domestic or other duties required by the child's family;
- (c) participate in a programme specified by the Director of a secure residential facility or the Superintendent of Prisons that will enable the child to better carry out employment or improve his or her education or training;
- (d) attend an out-patient treatment programme where the child has a history of abusing drugs or alcohol or other like programme that would provide services that are suitable to addressing the child's needs; or
- (e) attend a community based service programme.

**Revocation or suspension of reintegration order**

**105.(1)** The Reintegration Board may suspend or revoke an authorization of reintegration order where the Director is satisfied, on reasonable grounds, that

- (a) the child is failing to abide by or is about to fail to abide by any of the terms and conditions of the reintegration order;
- (b) the child has committed an offence while under the reintegration order;  
or
- (c) the revocation is necessary in order to protect the best interests of the child or the public.

(2) Where the Reintegration Board intends to suspend or revoke a reintegration order, the Reintegration Board shall, within a reasonable time, give written notice of that intention to

- (a) the Director of the relevant secure residential facility or the Superintendent of Prisons, as the case may be; and
- (b) the child, parent or appropriate adult or attorney-at-law of the child that is the subject of the reintegration order.

(3) Where the reintegration order has been suspended or revoked, the order shall cease to have effect and on completion of the notifications required under subsection (2) the child shall be returned to the relevant facility or prison.

(4) Where the child is not returned to the secure residential facility, the Chairman of the Reintegration Board shall issue a warrant for the apprehension of the child, who shall, upon apprehension, be returned to the relevant facility or prison.

(5) A parent or appropriate adult or attorney-at-law of the child who is the subject of the reintegration order who receives the notification referred to in subsection (2)(b) and fails to return the child to the relevant secure residential facility or prison is guilty of an offence and is liable on summary conviction to a fine of \$1 000 or to imprisonment for one year or to both.

(6) Where a child who is the subject of a reintegration order is returned to the relevant secure residential facility or prison in accordance with subsection (3), the period spent by that child in the relevant secure residential facility or prison while his reintegration order is suspended or revoked, as the case may be, shall be counted as a part of the sentence in respect of which the reintegration order was granted and shall be taken into account for the purpose of determining the date of the expiration of that sentence.

### **Forfeiture of reintegration**

**106.(1)** A child who during the period of the reintegration order is convicted of an offence punishable by detention in secure residential facility for 12 months or more thereby forfeits his reintegration and such forfeiture shall take effect from the date of conviction.

(2) Where there is an appeal against a conviction referred to in subsection (1) and the conviction is quashed, the forfeiture shall be set aside.

(3) The court before which the child referred to in subsection (1) is convicted shall state whether the sentence in respect of an offence referred to in subsection (1) shall be concurrent with or consecutive to the sentence in respect of which the reintegration is being forfeited.

### **Reapplication**

**107.(1)** Where an application for a reintegration order was refused under section 101(3) the child may reapply to the Reintegration Board after 4 months from the date of the refusal.

(2) A child, in respect of whom a reintegration order has been suspended or revoked, may reapply for a reintegration order after 4 months from the date of suspension or revocation or such lesser period as may be determined by the Reintegration Board.

(3) A child who forfeits reintegration under section 104 shall not be entitled to reapply for a reintegration order in relation to the sentence in respect of which the reintegration was forfeited.

**Reintegration continuing education order**

108.(1) A child detained in a secured residential facility who will turn 18 years of age before the completion of his sentence, has a record of good behaviour and is seeking to continue or complete his education may apply to the Reintegration Board in the prescribed form for the grant of a reintegration continuing education order.

(2) The Director of a secure residential facility shall give written notice of eligibility for the grant of a reintegration order to the child, parent or appropriate adult or attorney-at-law of the child who is the subject of the reintegration continuing education order within 6 months of the eligibility of the relevant child.

(3) Sections 101 to 106 shall apply to a reintegration continuing education order with such adaptations or modifications as the circumstances require.

**PART XII****MISCELLANEOUS****Regulations**

109. The Minister may make regulations generally to give effect to this Act.

**Amendment of Schedules**

110. The Minister may by order amend the *First, Second, Third, Fourth and Fifth Schedules* to this Act.

**Transitional**

111.(1) Where proceedings for an offence were commenced under the *Juvenile Offenders Act*, Cap. 138, the offence shall, after the coming into force of this Act, be dealt with, tried and determined in accordance with this Act.

(2) Where under this Act the penalty or punishment is mitigated or reduced in relation to the penalty or punishment that would have been applicable had this Act not come into force, the provisions of this Act relating to penalty or punishment shall apply.

**Consequential amendments**

112. The enactments set out in Column 1 of the *Sixth Schedule* are amended in the manner specified in Column 2 of the *Sixth Schedule*.

**Repeal**

113. The

- (a) *Juvenile Offenders Act, Cap. 138*; and
- (b) *Reformatory and Industrial Schools Act, Cap. 169*

are repealed.

**Commencement**

114. This Act comes into force on a date to be fixed by proclamation.

**FIRST SCHEDULE**

*(Sections 7, 16, 41, 51, 59 and 110)*

1. Making use of threatening, violent or obscene language
2. Riotous, indecent, disorderly or insulting behaviour in any public place
3. Trespass
4. Praedial larceny
5. Offences under section 62 of the *Police Act*, Cap. 167
6. Offences under the *Road Traffic Act*, Cap. 295
7. Summary offences carrying a penalty of 5 years imprisonment or less

**SECOND SCHEDULE**

*(Sections 16, 19, 41, 59 and 110)*

1. Summary offences under the *Criminal Damage Act*, Cap. 113B
2. Summary offences under the *Drug Abuse (Prevention and Control) Act*, Cap. 131
3. Summary offences under of the *Firearms Act*, Cap. 179
4. Summary offences under the *Theft Act*, Cap. 155
5. Offences that are triable summarily or on indictment
6. Indictable offences carrying a penalty of over 5 years but not exceeding 14 years imprisonment



**THIRD SCHEDULE**

*(Sections 19, 20, 29, 30, 46, 59 and 110)*

1. Murder
2. Manslaughter
3. Indictable offences under the *Criminal Damage Act*, Cap. 113B
4. Indictable offences under the *Drug Abuse (Prevention and Control) Act*, Cap. 131
5. Indictable offences under the *Firearms Act*, Cap. 179
6. Indictable offences under the *Theft Act*, Cap. 155
7. Indictable offences carrying a penalty of 15 years imprisonment or more

**FOURTH SCHEDULE**

*(Sections 72 and 110)*

**Constitution of Child Justice Board**

1. The Child Justice Board shall consist of the Superintendent of Prisons or his nominee, a magistrate, the Chief Probation Officer or his nominee and 6 other members appointed by the Minister by instrument in writing.

**Tenure**

2.(1) The members of the Child Justice Board shall hold office for a period of 3 years but shall be eligible for reappointment.

(2) The Minister shall appoint a member of the Child Justice Board as Chairman and another member as Deputy-Chairman.

(3) If a vacancy occurs in the office of the Chairman or Deputy Chairman the Minister shall fill the vacancy as soon as possible from among the members of the Child Justice Board.

**Resignation of a member of the Child Justice Board**

3. A member may at any time resign his office by instrument in writing addressed to the Chairman, who shall forthwith forward the instrument to the Minister, and upon the receipt by the Chairman of the instrument the member ceases to be a member of the Child Justice Board.

**Resignation of the Chairman of the Child Justice Board**

4.(1) The Chairman may at any time resign his office by instrument in writing addressed to the Minister, and the Chairman's resignation shall take effect upon the receipt of the instrument by the Minister.

(2) Where the Chairman ceases to be Chairman, he also ceases to be a member.

**Publication in *Official Gazette***

5. The names of all members of the Child Justice Board as first constituted and every change in the membership thereafter shall be published in the *Official Gazette*.

**Secretary**

6. The secretary shall be selected from among the members of the Child Justice Board.

**Quorum**

7. Five members of the Child Justice Board constitute a quorum.

**Meetings**

8.(1) The Child Justice Board shall regulate its own procedure.

(2) The Chairman may, at any time, call a meeting of the Child Justice Board and shall call a meeting within 14 days

(a) of a request for that purpose addressed to him in writing and signed by 3 members of the Child Justice Board; or

(b) of a direction to that effect addressed to him in writing and signed by the Minister.

(3) The Chairman, or, in his absence, the Deputy Chairman, shall preside at meetings of the Child Justice Board.

(4) In the absence of the Chairman or Deputy Chairman, or in the event that the Chairman or Deputy Chairman is unable to act, the members of the Child Justice Board present and constituting a quorum shall elect one of their members to preside at that meeting.

(5) Subject to this Act, the functions of the Child Justice Board shall not be affected by any vacancy in the membership thereof.

**Minutes**

9. The Child Justice Board shall keep minutes of its proceedings and submit the minutes to the Minister within 2 weeks after each meeting.

**Visits to secure residential facilities**

10.(1) The members of the Child Justice Board shall pay frequent visits to the secure residential facilities and at least 2 members of the Child Justice Board shall visit at least once a month.

(2) Except at the request of the Child Justice Board, during a visit neither the Director of a secure residential facility nor the next senior member of staff shall accompany the members of the Child Justice Board.

(3) Subject to subparagraph (2), no person other than the Director of a secure residential facility or his nominee may be permitted to accompany members of the Child Justice Board.

**FIFTH SCHEDULE***(Sections 94 and 110)***Constitution of Reintegration Board**

1.(1) The President, by instrument under the Public Seal acting on the recommendation of the Minister shall appoint the members of the Reintegration Board.

(2) The Reintegration Board shall comprise the following persons:

- (a) a present or former member of the Judiciary;
- (b) the Permanent Secretary of the Ministry of Attorney-General or his nominee;
- (c) the Permanent Secretary of the Ministry of Home Affairs or his nominee;
- (d) the Superintendent of Prisons or his nominee;
- (e) the Chief Probation Officer or his nominee;
- (f) the Commissioner of Police or his nominee;
- (g) the President of the Barbados Bar Association or his nominee;
- (h) a psychiatrist;
- (i) a criminologist or social worker;
- (j) a psychologist;
- (k) a representative from a religious institution;
- (l) a representative from civil society; and
- (m) a representative of the youth.

(3) The member of the Judiciary referred to in subparagraph (2)(a) shall be the Chairman and the Deputy Chairman shall be elected from among the members of the Reintegration Board.

(4) For the purposes of this paragraph, “youth” means a person who is under the age of 30 years but older than the age of 18 years.

**Tenure**

2.(1) A member of the Reintegration Board shall hold office for a period of 3 years and shall be eligible for reappointment.

(2) Where a vacancy is created by the death, resignation or removal from office of a member, a person may be appointed in accordance with paragraph 1(1) to fill that vacancy.

**Resignation**

3.(1) The Chairman or Deputy Chairman may at any time resign his office by instrument in writing addressed to the Minister and upon the date of receipt by the Minister of the instrument, the Chairman or Deputy Chairman ceases to be Chairman or Deputy Chairman and a member of the Reintegration Board.

(2) A member may at any time resign his office by instrument in writing addressed to the Chairman, who shall forthwith cause the instrument to be forwarded to the Minister and upon the date of the receipt by the Minister of the instrument, that member ceases to be a member of the Reintegration Board.

**Publication in *Official Gazette***

4. The names of all members of the Reintegration Board as first constituted and every change in the membership thereafter shall be published in the *Official Gazette*.

**Meetings**

5.(1) The Reintegration Board shall regulate its own procedure and shall meet at least once every quarter and at such other times as may be necessary or expedient for the transaction of the business of the Reintegration Board.

(2) The minutes of the meetings of the Reintegration Board shall be kept in proper form.

(3) The decisions of the Reintegration Board shall be by majority vote and shall be issued in writing.

**Quorum**

6. Seven members of the Reintegration Board shall constitute a quorum.

**Minutes**

7. The Reintegration Board shall submit the minutes of the meetings of the Reintegration Board to the Minister within two weeks after they have been approved by the Reintegration Board.

## SIXTH SCHEDULE

*(Section 112)*

## CONSEQUENTIAL AMENDMENTS

Column 1	Column 2
<i>Enactments</i>	<i>Amendments</i>
1. <i>Bail Act, Cap. 122A</i>	<p>In section 2 delete</p> <p>(a) the definition of the word "child" and substitute the following:</p> <p style="padding-left: 40px;">" "child" means a person under the age of 18;"</p> <p>(b) the definition of the word "young person".</p> <p>In section 5,</p> <p>(a) delete paragraph (b) of subsection (1) and substitute the following:</p> <p style="padding-left: 40px;">"(b) the court is satisfied that the defendant should be kept in custody</p> <p style="padding-left: 80px;">(i) for his own protection;</p> <p style="padding-left: 80px;">(ii) for the protection of the community; or</p> <p style="padding-left: 80px;">(iii) if he is a child, for his own welfare;"</p> <p>(b) in paragraph (b) of subsection (3) delete the words "or young person";</p>



*Sixth Schedule - (Cont'd)**CONSEQUENTIAL AMENDMENTS - (Cont'd)*

Column 1	Column 2
<i>Enactments</i>	<i>Amendments</i>
1. <i>Bail Act, Cap. 122A - (Cont'd)</i>	<p>(c) delete paragraph (c) of subsection (5) and substitute the following:</p> <p style="padding-left: 40px;">"(c) references to a defendant being kept in custody or being in custody include, where the defendant is a child being detained pursuant to the provisions of the <i>Child Justice Act, 2024</i> (Act 2024- );".</p>

In section 12, delete subsection (5) and substitute the following:

"(5) If a parent or guardian of a child consents to be a surety for the child for the purposes of this subsection, the parent or guardian may be required to ensure that the child complies with any requirement imposed on him by virtue of subsection (4), but

- (a) no requirement shall be imposed on the parent or the guardian of a child by virtue of this subsection where it appears that the child will attain the age of 18 before the time to be appointed for him to surrender to custody; and
- (b) the parent or guardian shall not be required to secure compliance with any requirement to which his consent does not extend and shall not, in respect of those requirements to which his consent does extend, be bound in a sum greater than \$500."

*Sixth Schedule - (Cont'd)**CONSEQUENTIAL AMENDMENTS - (Cont'd)*

Column 1	Column 2
<i>Enactments</i>	<i>Amendments</i>
1. <i>Bail Act, Cap. 122A - (Concl'd)</i>	In section 18, delete subsection (7).
2. <i>Community Legal Services Act, Cap. 112A</i>	In Part I of the <i>First Schedule</i> , delete item (f) and substitute the following:  <p style="margin-left: 40px;">"(f) all criminal and administrative proceedings involving a child as defined by the section 2 of the <i>Child Justice Act, 2024</i> (Act 2024- );".</p>
3. <i>Criminal Law (Arrestable Offences) Act, Cap. 125A</i>	In the <i>Schedule</i> , delete item 15 and substitute the following:  <p style="margin-left: 40px;">15. Section 76 of the <i>Child Justice Act, 2024</i> (Act 2024- ).".</p>
4. <i>Criminal Records (Rehabilitation of Offenders) Act, Cap. 127A</i>	In section 3 delete subsection (4) and substitute the following:  <p style="margin-left: 40px;">"(4) Notwithstanding subsection (2), where a person was under the age of 18 at the time of conviction of</p> <p style="margin-left: 80px;">(a) a summary offence or offences and has not been convicted of any other offences between the time of his eighteenth year and twentieth year; or</p> <p style="margin-left: 80px;">(b) an indictable offence or offences and has not been convicted of any other offence between the time of his eighteenth year and twenty-third year, then for the purpose of this Act, the person shall be treated as a rehabilitated person and the conviction shall be treated as spent."</p>

*Sixth Schedule - (Cont'd)**CONSEQUENTIAL AMENDMENTS - (Cont'd)*

Column 1	Column 2
<i>Enactments</i>	<i>Amendments</i>
4. <i>Criminal Records (Rehabilitation of Offenders) Act, Cap. 127A - (Concl'd)</i>	<p>In section 5(4) delete the words "<i>Reformatory and Industrial Schools Act</i>" and substitute the words "<i>Child Justice Act, 2024 (Act 2024- )</i>."</p> <p>In Part III of the <i>First Schedule</i> delete the words "<i>Juvenile Correctional Centres and Places of Safety</i>" and substitute the following:</p> <p style="padding-left: 40px;">"<i>Child Correctional Centres, Places of Safety, Residential Protection and Treatment Centres and Secure Residential Facilities</i>".</p>
5. <i>Drug Abuse (Prevention and Control) Act, Cap. 131</i>	<p>In section 2 delete</p> <p>(a) the definition of the word "child" and substitute the following:</p> <p style="padding-left: 80px;">" "child" means a person under the age of 18;" and</p> <p>(b) the definition of the word "young person".</p> <p>Delete all references in the Act to the words "or young person".</p>
6. <i>Education Act, Cap. 41</i>	In section 64B delete subsections (3) and (4).

*Sixth Schedule - (Cont'd)**CONSEQUENTIAL AMENDMENTS - (Cont'd)*

Column 1	Column 2
<i>Enactments</i>	<i>Amendments</i>
7. <i>Magistrate's Courts Act, Cap. 116A</i>	<p>Delete all references to the word "juvenile court" and substitute the words "child justice court" throughout the Act.</p> <p>In section 2,</p> <p>(a) in subsection (1),</p> <p style="padding-left: 40px;">(i) delete the definition of the word "child" and substitute the following:</p> <p style="padding-left: 80px;">" "child" means a person under the age of 18;"; and</p> <p style="padding-left: 40px;">(ii) insert the following definition in the appropriate alphabetical order:</p> <p style="padding-left: 80px;">" "child justice court" means a court sitting to hear charges against children."; and</p> <p>(b) delete subsection (6).</p> <p>Section 51 is deleted and substituted by the following:</p> <p><b>"Summary trial of information against child for an indictable offence</b></p> <p><b>51.(1)</b> Where a child appears or is brought before a magistrate on an information charging him with an indictable offence, he shall be tried summarily unless</p> <p style="padding-left: 40px;">(a) he is charged with an offence mentioned in the <i>Third Schedule to the Child Justice Act, 2024</i> (Act 2024- ); or</p>

*Sixth Schedule - (Cont'd)**CONSEQUENTIAL AMENDMENTS - (Cont'd)*

Column 1	Column 2
<i>Enactments</i>	<i>Amendments</i>
7. <i>Magistrate's Courts Act, Cap. 116A - (Cont'd)</i>	<p>(b) he is charged jointly with a person who has attained the age of 18 and the magistrate considers it necessary in the interests of justice to commit them both for trial,</p> <p>and accordingly in a case falling within paragraph (a) or (b), the magistrate shall commit the accused for trial if either he is of the opinion that there is sufficient evidence to put him on trial or he has power under section 20 so to commit him without consideration of the evidence.</p> <p>(2) Where, in a case falling within subsection (1)(b), a magistrate commits a child for trial for an offence with which he is charged jointly with a person who has attained the age of 18, the magistrate may also commit him for trial for any other indictable offence with which he is charged at the same time, whether jointly with the person who has attained the age of 18 or not, if that other offence arises out of circumstances that are the same as or connected with those giving rise to the first-mentioned offence.</p> <p>(3) If on trying a person summarily in pursuance of subsection (1) the magistrate finds him guilty, he may impose a sentence in accordance with Part VII of the <i>Child Justice Act, 2024</i> (Act 2024- ).".</p>

Delete the crossheading which states the words "Power to Remit Person Under 16 for Trial to Child Justice Court" and substitute the following:

**"Power to Remit a child for Trial to Child Justice Court".**

*Sixth Schedule - (Cont'd)**CONSEQUENTIAL AMENDMENTS - (Cont'd)*

Column 1	Column 2
<i>Enactments</i>	<i>Amendments</i>
7. <i>Magistrate's Courts Act, Cap. 116A - (Cont'd)</i>	<p>Delete section 56 and substitute the following:</p> <p><b>"Power of magistrate to remit a child for trial to a Child Justice Court in certain circumstances</b></p> <p><b>56.(1) Where</b></p> <p style="padding-left: 2em;">(a) a child appears or is brought before a court other than a child justice court on information jointly charging him and one or more other persons with an offence; and</p> <p style="padding-left: 2em;">(b) that other person, or any of those other persons, has attained the age of 18,</p> <p>subsection (2) shall have effect.</p> <p><b>(2) Where</b></p> <p style="padding-left: 2em;">(a) the magistrate proceeds to the summary trial of the information in the case of both or all of the accused, and the older accused or each of the older accused pleads guilty; or</p> <p style="padding-left: 2em;">(b) the magistrate</p> <p style="padding-left: 4em;">(i) in the case of the older accused or each of the older accused, proceeds to inquire into the information as an examining magistrate and either commits him for trial or discharges him; and</p>

*Sixth Schedule - (Cont'd)**CONSEQUENTIAL AMENDMENTS - (Cont'd)*

Column 1	Column 2
<i>Enactments</i>	<i>Amendments</i>
7. <i>Magistrate's Courts Act, Cap. 116A - (Cont'd)</i>	<p>(ii) in the case of the child, proceeds to the summary trial of the information,</p> <p>then, if in either situation the child pleads not guilty, the magistrate may before any evidence is called in his case remit him for trial to the child justice court.</p> <p>(3) A person remitted to a child justice court under subsection (2) shall be brought before and tried by a child justice court accordingly.</p> <p>(4) Where a person is so remitted to a child justice court</p> <p style="padding-left: 2em;">(a) he shall have no right of appeal against the order of remission; and</p> <p style="padding-left: 2em;">(b) the magistrate may give such directions as appear to be necessary with respect to his custody or for his release on bail until he can be brought before the child justice court.</p> <p>(5) In this section "the older accused" means such one or more of the accused as have attained the age of 18."</p>

Delete the shoulder note of section 64 and substitute the following:

**"Restriction on fines in respect of a child".**

Section 71 is repealed.

*Sixth Schedule - (Cont'd)**CONSEQUENTIAL AMENDMENTS - (Cont'd)*

Column 1	Column 2
<i>Enactments</i>	<i>Amendments</i>
7. <i>Magistrate's Courts Act, Cap. 116A - (Cont'd)</i>	<p>Delete section 115 and substitute the following:</p> <p><b>"Enforcement of fines imposed where the offender is a child</b></p> <p><b>115.(1)</b> Where an offence has been committed by a child which involves a default consisting in failure to pay, or want of sufficient distress to satisfy, an amount adjudged to be paid by a conviction, the magistrate may, subject to the following provisions of this section, make</p> <p style="padding-left: 40px;">(a) an order requiring the defaulter's parent or guardian to enter into a recognizance to ensure that the defaulter pays so much of that amount as remains unpaid; or</p> <p style="padding-left: 40px;">(b) an order directing so much of that amount as remains unpaid to be paid by the defaulter's parent or guardian instead of by the defaulter.</p> <p>(2) An order under subsection (1) shall not be made in respect of a defaulter</p> <p style="padding-left: 40px;">(a) in pursuance of paragraph (a) of that subsection, unless the parent or guardian in question consents;</p> <p style="padding-left: 40px;">(b) in pursuance of paragraph (b) of that subsection, unless the magistrate is satisfied in all the circumstances that it is reasonable to make the order.</p>



*Sixth Schedule - (Cont'd)**CONSEQUENTIAL AMENDMENTS - (Cont'd)*

Column 1	Column 2
<i>Enactments</i>	<i>Amendments</i>
<p>7. <i>Magistrate's Courts Act, Cap. 116A - (Cont'd)</i></p>	<p>(3) A magistrate shall not make an order under subsection (1) in consequence of a default of a child consisting in failure to pay or want of sufficient distress to satisfy an amount adjudged to be paid by a conviction unless the magistrate has since the conviction inquired into the defaulter's means in his presence on at least one occasion.</p> <p>(4) A magistrate shall not make an order under subsection (1) unless the magistrate is satisfied that the defaulter has, or has had since the date on which the amount in question was adjudged to be paid, the means to pay the amount or any instalment of it on which he has defaulted, and refuses or neglects or, as the case may be, has refused or neglected, to pay it.</p> <p>(5) An order under subsection (1) may be made in pursuance of paragraph (b) of that subsection against a parent or guardian who, having been required to attend, has failed to do so but, save as aforesaid, an order under that subsection shall not be made in pursuance of that paragraph without giving the parent or guardian an opportunity of being heard.</p> <p>(6) A parent or guardian may appeal to the High Court against an order under subsection (1) made in pursuance of paragraph (b) of that subsection.</p> <p>(7) Any amount ordered under subsection (1)(b) to be paid by a parent or guardian may be recovered from him in like manner as if the order had been made on the conviction of the parent or guardian of an offence.</p>

*Sixth Schedule - (Cont'd)**CONSEQUENTIAL AMENDMENTS - (Cont'd)*

Column 1	Column 2
<i>Enactments</i>	<i>Amendments</i>
7. <i>Magistrate's Courts Act</i> , Cap. 116A - (Concl'd)	<p>(8) In this section</p> <p>"amount adjudged to be paid by a conviction" means any fine, costs, compensation or other amount adjudged to be paid by an order made on a finding of guilt, including an order made under the <i>Child Justice Act, 2024</i> (Act 2024- );</p> <p>"guardian", in relation to a child, means a person appointed, according to law, to be his guardian by deed or will, or by order of a court of competent jurisdiction."</p> <p style="text-align: center;"><i>In the Fifth Schedule</i></p> <p>(a) in the column entitled "Number" delete the words "Cap. 169";</p> <p>(b) in the column entitled "Short title" delete the words "Reformatory and Industrial Schools Act"; and</p> <p>(c) in the column entitled "Proceedings to which section 85 applies" delete the words "section 43".</p>
8. <i>Penal System Reform Act</i> , Cap. 139	<p>In the long title</p> <p>(a) delete the semi-colon appearing after the words "powers of sentencing" and substitute a full-stop; and</p>

*Sixth Schedule - (Cont'd)**CONSEQUENTIAL AMENDMENTS - (Cont'd)*

Column 1	Column 2
<i>Enactments</i>	<i>Amendments</i>
8. <i>Penal System Reform Act, Cap. 139 - (Cont'd)</i>	<p>(b) delete the following:</p> <p style="padding-left: 40px;">"by an amendment to the <i>Juvenile Offenders Act</i> to raise the age of criminal responsibility; and for connected and incidental purposes."</p> <p>In section 2 delete the definition of "custodial sentence" and substitute the following:</p> <p style="padding-left: 40px;">"custodial sentence" means a sentence of imprisonment or of detention in a secure residential facility or a residential protection and treatment facility as defined by the <i>Child Justice Act, 2024 (Act 2024- )</i>;"</p> <p>Section 5 is repealed.</p> <p>Delete section 10 and substitute the following:</p> <p style="text-align: center;"><b>"Attendance centre orders</b></p> <p><b>10.(1)</b> Where a court has the power to deal with a person under section 9 of the <i>Probation of Offenders Act, Cap. 146</i> for failure to comply with any of the requirements of a probation order, the court may, if it has been notified by the Minister that an attendance centre is available for the reception of persons of that person's description, order that person to attend at such a centre, to be specified in the order, for such number of hours as may be so specified.</p> <p>(2) An order under this section is referred to in this Act as an "attendance centre order".</p> <p>(3) An attendance centre order shall not be made in the case of an offender who has been previously sentenced to imprisonment."</p>

*Sixth Schedule - (Concl'd)***CONSEQUENTIAL AMENDMENTS - (Concl'd)**

Column 1	Column 2
<i>Enactments</i>	<i>Amendments</i>
8. <i>Penal System Reform Act, Cap. 139 - (Concl'd)</i>	<p>In section 13</p> <p>(a) subsection (1), delete the word "16" and substitute the word "18";</p> <p>(b) delete subsection (2);</p> <p>(c) subsection (5), delete paragraph (b) and substitute the following:</p> <p style="padding-left: 40px;">"(b) be more than 240."</p> <p>In section 17(1) delete the word "16" and substitute the word "18".</p>
9. <i>Magistrate's Courts (Criminal Procedure) Rules, 2001 (S.I. 2001/98)</i>	<p>In rule 30, paragraph (1), delete</p> <p>(a) the semi-colon and the word "and" in sub-paragraph (j) and substitute a full-stop; and</p> <p>(b) sub-paragraph (k).</p> <p>In the <i>Second Schedule</i> delete the words "The fees payable by juveniles shall be in the discretion of the magistrate." and substitute the following:</p> <p style="padding-left: 40px;">"The fees payable by a person under the age of 18 years shall be in the discretion of the magistrate."</p>

CHILD JUSTICE BILL  
**EXPLANATORY MEMORANDUM**

The Child Justice Bill, 2024 makes provision for the reform of the criminal law applicable to children and the repeal of the

- (a) *Juvenile Offenders Act*, Cap. 138; and
- (b) *Reformatory and Industrial Schools Act*, Cap. 169.

PART I  
PRELIMINARY

- Clause 1:** states the short title.
- Clause 2:** provides for the definitions which aid in the interpretation and understanding of the Bill.
- Clause 3:** provides for the purpose of the Bill.

PART II  
APPLICATION AND CRIMINAL RESPONSIBILITY

- Clause 4:** makes provision for the scope of the application of the Bill.
- Clause 5:** states that a child under the age of 12 years is not capable of committing a criminal offence.
- Clause 6:** sets out the principles to be applied when dealing with a child pursuant to functions to be performed pursuant to the legislation.

PART III  
ASSESSMENT OF A CHILD

- Clause 7:** sets out the procedure to be followed where a police officer encounters a child that has come into conflict with the law.
- Clause 8:** sets out the procedure to be followed by a probation officer in assessment of a child after that child has been apprehended by a police officer under clause 6.
- Clause 9:** states the persons who shall or may attend an assessment.
- Clause 10:** states the powers and duties of a probation officer prior to assessment.
- Clause 11:** states the powers and duties of a probation officer at assessment.

PART IV  
SECURING ATTENDANCE OF A CHILD AT INITIAL INQUIRY

- Clause 12:** states the methods of securing attendance of a child at initial inquiry.
- Clause 13:** makes provision for the issue of a summons in relation to attendance of an initial inquiry.
- Clause 14:** makes provision for the issue of a notice in relation to attendance of an initial inquiry.
- Clause 15:** makes provision for the procedure applicable where a police officer is uncertain of the age of a person suspected to have committed an offence especially where that person is suspected to be a child.
- Clause 16:** sets out the procedure for release of a child into care of the parent or the appropriate adult before the initial inquiry.
- Clause 17:** grants the Director of Public Prosecutions the power to authorise the release of a child into care of the parent or the appropriate adult before the initial inquiry.
- Clause 18:** sets out the duties of the police officer and the person into who care a child is released pursuant to clauses 16 or 17.
- Clause 19:** sets out the procedure for release of a child on recognizance prior to initial inquiry.
- Clause 20:** states that a police officer shall not release a child accused of an offence referred to in the *Third Schedule*.
- Clause 21:** states that a child not released pursuant to clause 20 shall be detained in a secure residential facility as defined by clause 2.
- Clause 22:** sets out the procedure to be followed where a child is injured, becomes ill or dies in police custody.
- Clause 23:** imposes an obligation of a police officer in charge of a police station to keep a register of children who are to attend an initial inquiry.

PART V  
INITIAL INQUIRY AND DIVERSION

- Clause 24:** states the nature and objectives of an initial inquiry.
- Clause 25:** identifies the persons who must or may attend an initial inquiry.
- Clause 26:** sets out the procedure for conducting an initial inquiry.
- Clause 27:** states the powers and duties of a magistrate with respect to an initial inquiry.
- Clause 28:** makes it an offence for a person to fail to attend an initial inquiry where directed to do so.
- Clause 29:** makes provision for the release of a child into care of parent or appropriate adult where the initial inquiry is not disposed of at the first appearance of the child before a magistrate and it is in the interest of justice to do so.
- Clause 30:** states the circumstances for detaining a child in a secure residential facility after the first appearance of the child before a magistrate at an initial inquiry.
- Clause 31:** states the circumstances for postponing an initial inquiry.
- Clause 32:** states the circumstances for postponing an initial inquiry for a more detailed assessment.
- Clause 33:** states the circumstances for making a decision to divert a matter.
- Clause 34:** states the purposes for diversion.
- Clause 35:** states the circumstances for a child's eligibility for diversion.
- Clause 36:** identifies the levels of diversion options.
- Clause 37:** states the minimum standards applicable to diversion and diversion options.
- Clause 38:** states the consequences for breach of a diversion option.
- Clause 39:** empowers the Minister to make regulations to develop suitable diversion options.
- Clause 40:** makes provision for the Magistrate to stop the proceedings at an initial inquiry and address the matter as if it were commenced under the *Child Protection Act, 2024* in certain circumstances.

**Clause 41:** makes provision for referral of matters for trial and detention pending trial.

## PART VI COURT PROCEEDINGS

**Clause 42:** makes provision for the conduct of proceedings in relation to a child in court.

**Clause 43:** states the standards applicable to the treatment of a child in court.

**Clause 44:** states that the responsibility of a child shall be proved by the prosecution beyond reasonable doubt.

**Clause 45:** sets out the standards applicable for the separation and joinder of trials involving child and adult.

**Clause 46:** sets out the time limits relating to conclusion of trials.

**Clause 47:** states that the Court may make an order for diversion where a child acknowledges responsibility for an alleged offence.

**Clause 48:** states the persons who may or may not be allowed to attend court proceedings involving a child.

**Clause 49:** prohibits the publication of information in proceedings related to a child which reveal the identity of the child or a witness appearing in such proceedings.

## PART VII SENTENCING OF A CHILD

**Clause 50:** states that a court may impose a sentence on a child that has been found guilty of committing an offence.

**Clause 51:** makes provision for the preparation of pre-sentence reports by probation officer in relation to a child found guilty of committing an offence.

**Clause 52:** identifies the purposes of sentencing a child found guilty of committing an offence.

**Clause 53:** empowers the court to impose a community based sentence.

**Clause 54:** empowers the court to impose a restorative justice sentence.



- Clause 55:** empowers the court to order that child to appear at a family group conference pursuant to the grant of restorative justice order under clause 54.
- Clause 56:** empowers the court to impose a sentence of correctional supervision for a period not exceeding 3 years.
- Clause 57:** empowers the court to impose a sentence involving a compulsory residential requirement in a secure residential facility, subject to clause 58 or a prison, subject to clause 59.
- Clause 58:** makes provision for the procedure for imposing a sentence to be detained in a secure residential facility.
- Clause 59:** makes provision for the procedure for imposing a sentence to be detained in a prison.
- Clause 60:** makes provision for the postponement or suspension of passing sentence.
- Clause 61:** empowers the court to impose a penalty *in lieu* of fine or imprisonment.
- Clause 62:** prohibits the imposition of a sentence of death, life imprisonment or flogging or whipping.
- Clause 63:** grants the power to give notice to show cause why the parent of the child or an appropriate adult should not pay the compensation.
- Clause 64:** makes provision for proceedings to show cause why the parent of the child or an appropriate adult should not pay the compensation.

PART VIII  
LEGAL REPRESENTATION

- Clause 65:** states that a child shall be provided with legal representation by the Government at all of the stages of any administrative or criminal proceedings.
- Clause 66:** sets out the standards to be complied with by an attorney-at-law in all of the stages of any administrative or criminal proceedings.

PART IX  
GENERAL PROVISIONS AS TO PROCEEDINGS IN COURT

- Clause 67:** makes provision for extension of the power to take depositions.

PART X  
SECURE RESIDENTIAL FACILITY

- Clause 68:** provides a definition of a “secure residential facility”.
- Clause 69:** empowers the Minister to make an order to designate and cause lands or buildings designated as a secure residential facility.
- Clause 70:** makes provision for the Government Industrial School as a secure residential facility.
- Clause 71:** states the grounds for detention in a secure residential facility.
- Clause 72:** makes provision for the appointment of the Child Justice Board. The constitution of the Child Justice Board is set out in *the Fourth Schedule*.
- Clause 73:** states the functions of the Child Justice Board in having responsibility for the policy of the secure residential facility and giving directions to a Director of a secure residential facility.
- Clause 74:** makes provision of the appointment of a Director of a secure residential facility.
- Clause 75:** makes provision for the appointment of the staff of a secure residential facility in accordance with the *Public Service Act*, Cap. 29.
- Clause 76:** recognises that certain officers will be vested with the powers under the *Police Act*, Cap. 167 in order to convey a child to and from a secure residential facility or to return a child to a secure residential facility where the child has escaped a secure residential facility or refuses to return.
- Clause 77:** imposes an obligation of a Director of a secure residential facility to maintain records relating to a child detained in a secure residential facility.
- Clause 78:** empowers the Director of a secure residential facility to create programmes appropriate for a child detained in a secure residential facility.
- Clause 79:** makes provision for a child detained in a secure residential facility to receive medical or psychiatric treatment.
- Clause 80:** makes provision for a Director to apply to the Court for an order to transfer a child from one secure residential facility to another.
- Clause 81:** empowers the Director of a secure residential facility to declare a situation to be an emergency where there is the occurrence of fire, riot or disturbance, contagious disease, or a natural disaster.

- Clause 82:** sets out the procedure for notification of a parent or appropriate adult in respect of a child and the Coroner and Police Serve of the death, injury or serious illness of a child detained in a secure residential facility.
- Clause 83:** states that the resources of a secure residential facility shall be such moneys as Parliament may provide for the purpose of operating the secure residential facility.
- Clause 84:** imposes on a child detained in a secure residential facility to comply with the rules of conduct and discipline as set out in the legislation and to participate in the programmes devised by the Director.
- Clause 85:** states the conduct that are considered to be infractions if committed by a child detained in a secure residential facility.
- Clause 86:** states the conduct that are considered to be acts of misconduct if committed by a child detained in a secure residential facility.
- Clause 87:** states the power of the Director to impose discipline on a child detained in a secure residential facility where that child has committed an infraction or an act of misconduct. It should be noted that certain forms of punishment are prohibited those being corporal punishment or the employment of cruel or inhuman measures.
- Clause 88:** sets out the procedure to be followed in the conduct of searches in relation to a child detained in a secure residential facility.
- Clause 89:** sets out the mechanisms to be used to maintain order in a secure residential facility.
- Clause 90:** establishes the grievance procedure to be followed where a child detained in a secure residential facility believes he has been treated an unreasonable, unjust, oppressive, improperly discriminatory, arbitrary, unfair, unduly harsh, or inappropriate manner.
- Clause 91:** sets out the procedures to be followed in the discharge of a child from a secure residential facility.
- Clause 92:** empowers the Minister to approve the discharge of a child from a secure residential facility on consultation with the Director on the application in writing by an appropriate adult, attorney-at-law, or parent.
- Clause 93:** makes provision for persons aggrieved by decisions made under Part X to appeal to a Judge in Chambers.

PART XI  
REINTEGRATION

- Clause 94:** establishes a Board to be known as the Reintegration Board. The constitution of the Reintegration Board is addressed in the *Fifth Schedule*.
- Clause 95:** sets out the functions of the Reintegration Board, the general responsibility of which is to consider application of a child detained in a secure residential facility or a prison for early release.
- Clause 96:** states the members of the Reintegration Board shall be paid such remuneration as the Minister determines.
- Clause 97:** states that the Reintegration Board may appoint and employ such other officers and employees as it deems necessary, on such terms and conditions as it thinks fit.
- Clause 98:** states that the expenses of the Reintegration Board shall be defrayed out of the moneys voted for the purpose by Parliament.
- Clause 99:** imposes a duty of confidentiality of the Reintegration Board or any person concerned with the Reintegration Board.
- Clause 100:** makes provision for the protection from suit of members of the Reintegration Board in the *bona fide* exercise of their duties and functions under the legislation.
- Clause 101:** states the parameters for eligibility for the grant of a reintegration order.
- Clause 102:** sets out the procedure to be followed in the application for a reintegration order.
- Clause 103:** states the procedures to be followed for the grant of a reintegration order.
- Clause 104:** makes provision for the content of a reintegration order.
- Clause 105:** states the conditions that must be met for the revocation or suspension of a reintegration order.
- Clause 106:** states the conditions for forfeiture of reintegration.
- Clause 107:** sets out the procedure to be followed in the reapplication for a reintegration order.
- Clause 108:** empowers the Reintegration Board to make a reintegration continuing education order.

PART XII  
MISCELLANEOUS

- Clause 109:** gives the Minister the power to make regulations generally to give effect to this Act.
- Clause 110:** gives the Minister the power to amend by order the *First, Second, Third, Fourth and Fifth Schedules*.
- Clause 111:** is a transitional provision which makes provision for the continuation of actions first initiated under the *Juvenile Offenders Act, Cap. 138* to be dealt with, tried, and determined in accordance with the proposed legislation and the imposition of penalties to be administered in accordance with the proposed legislation.
- Clause 112:** states that consequential amendments required to be done to the other enactments to facilitate the operation of the proposed legislation shall be addressed in the manner set out in the *Sixth Schedule*.
- Clause 113:** states that the *Juvenile Offenders Act, Cap. 138* and the *Reformatory and Industrial Schools Act, Cap. 169* are repealed.
- Clause 114:** states that the *Child Justice Act, 2024* shall come into operation on a date fixed by proclamation.



# **HANSARD TRANSCRIPTS**





**FIRST MEETING OF THE JOINT SELECT COMMITTEE (STANDING)  
ON SOCIAL SECTOR AND THE ENVIRONMENT  
ON THE  
CHILD PROTECTION AND CHILD JUSTICE BILLS, 2023  
HELD IN THE SENATE CHAMBER, PARLIAMENT BUILDINGS  
TRAFALGAR STREET, BRIDGETOWN**

**FRIDAY, AUGUST 25, 2023**

**FIRST SESSION 2022-2027**

**PRESENT:**

**Ms. Toni N. S-A. MOORE, J.P., M.P. (Chairman)**  
**Senator John A. KING (Deputy Chairman)**  
**Mr. Trevor A. PRESCOD, J.P., M.P.**  
**Mr. Corey A. LANE, J.P., M.P.**  
**Senator Rev. Canon Dr. JOHN A. ROGERS, B.Sc.,  
B.A. (Hons), M.Phil., D.Th.**  
**Senator Dr. the Hon. Chelston W. DaC.  
BRATHWAITE, C.H.B., Ph.D.**

**ABSENT:**

Miss C. Y. FORDE, J.P., M.P.

**ALSO IN ATTENDANCE:**

Ms. Beverley S. GIBBONS (Deputy Clerk of Parliament)  
Mr. Nigel R. JONES (Deputy Clerk of Parliament)  
Ms. Shawn Raine BELLE (Chief Parliamentary Counsel  
(C.P.C.)) (Ag.)  
Ms. Suzanne HAMBLIN, (Library Assistant)  
Miss J'anne C. GREENIDGE, (Typist)

*The meeting commenced at 1:18 p.m.*

**Madam DEPUTY CLERK:** Good morning everyone. Welcome. Before we begin our deliberations we must address a few housekeeping matters that are on the Agenda, items one through to four. I will start with Item 1: Formal appointment of Chairman and Deputy Chairman.

May I take a motion for the nomination and appointment of the Chairman please?

**Senator Rev. Canon Dr. John A. ROGERS:** I nominate Ms. Toni Moore.

**Senator Dr. the Hon. C. W. DaC. BRATHWAITE:** I second that nomination.

**Madam DEPUTY CLERK:** Any further nominations? I hereby declare Ms. Toni Moore the duly elected Chairman of this Committee, due to the fact that there were no more formal nominations.

Madam Chairman, the meeting is over to you.

**Madam CHAIRMAN:** Thank you. We now have to move

to the formal appointment of a Deputy Chairman; so at this stage, we will entertain a motion for nominations for a Deputy Chairman.

**Senator Rev. Canon Dr. John A. ROGERS:** I nominate Senator John King as Deputy Chairman.

**Senator Dr. the Hon. C. W. DaC. BRATHWAITE:** I second that, Madam Chairman.

**Madam CHAIRMAN:** We have before us a nomination for Senator John King. That nomination is seconded. Are there any other nominations before the Committee?

**Senator Rev. Canon Dr. John A. ROGERS:** I hereby move that nominations be closed.

**Madam CHAIRMAN:** Nominations are hereby closed. I then hereby declare Senator John King the duly elected Deputy Chairman of the Joint Select Committee (Standing) for Social Care and the Environment.

We should have before us Minutes but before we get into the Minutes, I just want to take this opportunity to welcome everybody; all participants on this Committee and the staff that is supporting us as well. I am hearing that this Committee will have quite a bit of work before it, so as we look around the table, I am thinking that our faces will become very familiar to each other shortly and this preliminary meeting would be one that will become a very distant memory in a short space of time.

We are happy to have the Chief Parliamentary Counsel (Acting), Ms. Belle as well and we look forward to your contribution. I know that much of what we will be discussing in this Committee, your guidance will be greatly appreciated.

We had an initial meeting, or a preliminary, preliminary meeting a few weeks ago on the 27th July, 2023, as we anticipated getting our work started. We have before us the Minutes of that preliminary meeting. Can we take those Minutes as being read or has everyone seen them?

On that occasion we had a quorum of four, similar to this occasion where we have a quorum of four but taking those Minutes as read; do we have a motion for the acceptance of the Minutes?

**Senator Dr. the Hon. C. W. DaC. BRATHWAITE:** I so move that the Minutes be accepted as presented.

**Senator J. A. KING:** I second it.

**Madam CHAIRMAN:** The Minutes have been accepted so then we can proceed to Matters Arising. The Minutes before us were very brief. We discussed the appointment of a Chairman and a Deputy Chairman; we formally did those appointments. We looked at the execution of Terms of Reference and the Minutes would have captured the agreement that was reached in terms of invitations for submissions. I do believe that the final date for submissions is today. We had agreed on the 18<sup>th</sup> August, 2023, but there was an extension given for a further week and I do believe that that would be the only substantial difference coming out of the Minutes. I am open to discussion if there are other matters arising from the Minutes.

**Mr. T. A. PRESCOD:** I am just apologising for my lateness. I do not want to hold up the meeting. I probably should have been here earlier so I just wanted to say that to you.

**Madam CHAIRMAN:** We are glad to have you join us. I recognise Senator Rogers.

**Senator Rev. Canon Dr. John A. ROGERS:** Before you move on from the Minutes, the list of groups that would have been mentioned here; I do not see anything speaking of the Barbados Christian Council (BXC) which is really the actual representative body of most of the Christian Churches on the island which covers: Moravian; Methodist; Anglican; Roman Catholic; every denomination.

**Madam CHAIRMAN:** On Page 4, we had a suggestion of the Diocese of Barbados but what I do believe is being put before us that the Christian Council supersedes the Diocese of Barbados and it covers all different denominations, so what would be the further suggestion?

**Senator Rev. Canon Dr. John A. ROGERS:** Well, I think we should write to Reverend Dr. Cicely Athill-Horsford from the Moravian Church, who is the head of the BXC at this point in time. I believe she still is. I think that is the group that we should get some submissions, if you can just extend for their purposes.

**Madam CHAIRMAN:** Just to confirm that we wrote to everyone on the list?

**Madam DEPUTY CLERK:** Yes, we did.

**Madam CHAIRMAN:** So invitations went out and taking note of the fact that it was made public and submissions. That was a discussion that we had, whether we needed to write to people because it was being advertised publicly but taking note of the fact that it is an important omission and we would not want any grouping to feel disrespected. I think that on this occasion, if it is the will of the Committee, we can make that extension to them, letting them know that the time has passed but it came up that there was an omission and giving them the opportunity of one week within which they can give submissions.

We had circulated to the Committee at least 10 submissions so far. Today is the closing date, so it is possible that we will have further submissions coming in and waiting for a response from the Christian Council would in no way impede our work because we can get on

with some other discussions before receiving their submissions and then entertain them in person; if they so desire. So we are agreed.

Are there any other matters arising from the Minutes? Yes, I do recognise Senator Dr. the Hon. Chelston Brathwaite.

**Senator Dr. the Hon. C. W. Dac. BRATHWAITE:** Madam Chair, I think one of the more important decisions that was made at that meeting was that we should consider these two Bills: The Child Protection Bill and the Child Justice Bill – together and that as we proceed it is important that we see this as one strategic initiative, to treat with the care and protection of the children of the nation. In that regard, the observations that are being made so far from what I am seeing, relate very much to the area of Child Justice and not so much to the care of our children. I think there is need for a significant intervention, as has been discussed in the Child Protection Bill, on the care of children and that Child Justice and the treatment of any delinquency, being also important does have its place. I do feel that we need in this Committee, to give appropriate attention to the care and protection of the child. I think this should be a priority of our discussion. Thank you.

**Madam CHAIRMAN:** Thank you, Senator Brathwaite. I recognise as well Mr. Trevor Prescod.

**Mr. T. A. PRESCOD:** Madam Chair, I just took a quick glance at Item 4, regarding the manner of dealing with the Bill. I believe that is what Dr. Brathwaite is referring to as well.

**Madam CHAIRMAN:** Item 4 in the Minutes?

**Mr. T. A. PRESCOD:** Yes. I strongly believe that there are too many bits and pieces of legislation and too many different departments; trying to address issues relating to the rights of children across Barbados. I know that it is written here that we should consider the two Bills together but I want to propose or even suggest to the persons who drafted this legislation, that we need to codify some of our laws.

I considered it a waste of time when these two (2) matters were debated in the House of Assembly and those people who were debating the matters, found it very difficult not to make points that were a duplication of some of the points which I had heard before. The second Bill that came to the House did not even get the attention that I believed it deserved. My view is, we were being cautious that the interpretation of the general publication, which was a distortion of what the Bill was all about, was not associated with the second part of the Bill which at the time, Minister Abrahams had actually brought before the House.

I would like to see the codification of these Bills and probably any other Bill that relates to the rights of children; whether it is protection of the rights of the child or however they are labelled. I would like to hear from persons who do the drafting, if there is a possibility that we can bring all of these pieces of legislation together.

For those who work in this area and Senator John King would know, since he worked at the Government

Industrial School. When you get the Child Care Board addressing an issue; you get the Ministry of Education feeling that they have a right to address the issue. You get the police believing that they have information which they cannot share with other departments. Sometimes the information that is at one office is not readily shared with the other office, so you can pick up trends even before a serious act of abuse is committed if that cooperation or collaboration between the different agencies is put in place.

Apart from the legislation itself, I think that in some cases, we will need to look at structures and I do not know if this Committee would be able to deal with that but I feel that we should have one piece of legislation. With all of these different names, most of the time it comes back to one conclusion: Justice. Is there not a way that we can find the appropriate wording that when we pick up the Laws of Barbados, rather than scrambling through Section this and Chapter that, so that we can pick up one piece of legislation with children's rights in there? How come you can have a Convention on the Rights of the Child but you cannot get the codification of the legislation related to the rights of children?

**Ms. SHAWN RAINE BELLE:** Chair, just to make the observation that the Child Justice Bill touches and concerns the protection or the institution of a distinct justice process for children who come into conflict with the law. That is a distinct area of concentration and that would have involved then the repeal of the Juvenile Offenders Act and the Reformatory and Industrial Schools Act.

It then would have involved the consequential amendment of a number of pieces of legislation that would have included the Magistrates' Courts Act; the Penal System Reform Act and other pieces of legislation that are dealt with in the Sixth Schedule. That would have then consolidated all of the provisions that would have related to Child Justice. Care and Protection is a different strand of protection, so that is where it provides for the intervention of the new Child Protection Authority that is taking over from the Child Care Board; to intervene when a child is in need of care and protection from certain abuses. That then involves a different strand or emphasis. That would have then involved the repeal of four (4) major pieces of legislation dealing with child protection; namely the Child Care Board Act; the Prevention of Cruelty Act; the Protection of Children Act and the Young Persons Protection Act. The provisions that were set out therein; those things that were worthy of address, would have then been consolidated into the Child Protection Bill.

What is happening is that that also represents a consolidation of the areas of law on child protection under the child protection focus, so that was the rationale for approaching it in those ways; by having one with an emphasis on the care and protection of children and the intervention of the Child Protection Authority that would be instituted under the Child Care and Protection Bill and then dealing with Child Justice which is a completely different sphere.

There is a foresight of intersection, where with the

abolition of status offences on the basis of being a child. There were under the Reformatory Schools' Legislation; there was a sanction on wandering and delinquency. The reorientation was that you would eliminate that and once then a child was brought to the attention of the court, they would not be immediately detained in the Government Industrial Schools but there would be a process where the court would examine their circumstances and then not address them in the Child Justice System but deal with them in the Child Protection Jurisdiction and there would be a rerouting of addressing.

That is where there is an interception of the two (2). Then you have to have those issues addressed with children who would not be considered to be criminally responsible. Those children need to be dealt with under the Child Protection because even though they would not be criminally held responsible, there still needs to be some kind of control of those children to regulate their behaviour and then be able to reintroduce them to society properly: reoriented or rehabilitated. I hope with those comments; I have given an explanation for the approach that was taken. Thank you.

**Mr. T. A. PRESCOD:** I can then extrapolate from that, that you have been able to minimise the wide variety of Acts which we all had and now you have two major strands that capture almost everything? You are moving gradually.

**Ms. SHAWN RAINE BELLE:** Yes, Sir. It should also be brought to the attention of the Committee that there is, in train, the strengthening of offences and penalties for offences that are perpetuated against children. Those will be dealt with under the amendments for Sexual Offences Act, as well as the Offences Against the Persons Act. There is also that move afoot that you should be aware of. Thank you.

**Madam CHAIRMAN:** Thank you, Ms. Belle. I think that your answer to the Committee has been useful because I am sure that it answers in the minds of all of us, the question why the two separate pieces of legislation have become necessary. The question still before us is whether we will want to consider them together, jointly, for the purpose of the Committee's work, to have the submission handled in the way that we have determined. Yes, maybe the submissions so far have been skewed towards one area and to me that is already more of a reason why the two can be managed jointly. Ms. Belle, I see you want to come back in.

**Ms. SHAWN RAINE BELLE:** Yes, Chair, just to make the observation that it was always contemplated that the Bills would be discussed together as a suite because they complement each other and the jurisdictions under the pieces of legislation would be invoked as required. It is really important that they be discussed together because they complement each other in various ways.

**Madam CHAIRMAN:** What we see is the Ministry of Social Care having to work effectively with the Ministry of Home Affairs to ensure that the intent of the of pieces of legislation is realised. Committee Members, are we satisfied with that? Thank you.

Then, the question also before us as a matter arising, is relevant to the quorum, where a decision or a discussion at the first meeting was that the quorum could be in hybrid format. For a quorum, we need at least four Committee Members and we just need to have that rectified where we all accept that that is the way we would want to go. If the Chair could make any plug, I think that that would be one of the most effective ways of ensuring that we save on time. Unless there are any objections, we take that as further support for the hybrid format.

Matters arising as well, we discussed at the last meeting, how submissions would run. One of the things that I realised coming out of those submissions that we have seen so far, is that the Committee may have to have discussions on whether requests for oral presentations are something that should be entertained. In reading one of the submissions in particular that we have so far, it is out of the jurisdiction of Barbados and there is no indication that it is a Barbadian living on the outside that is weighing in. The question before the Committee for instance, is do we accept an oral presentation or not? The Clerk will have to advise whether or not there is any limitation to our discussion and determination on that. Or, once a person asks for an oral presentation, if automatically we must allow it. Can you give your guidance on that?

**Madam DEPUTY CLERK:** Madam Chairman, thank you for the question. I would say it is a decision basically for the Committee to decide holistically. From the Clerk's point of view, I do not see any objections to someone making an oral presentation from overseas. It is generally up to the Committee to decide that.

**Madam CHAIRMAN:** I recognise Senator Rev. Canon Dr. J. A. Rogers.

**Senator Rev. Canon Dr. J. A. ROGERS:** Thank you, Chair. I was not indicating that I wanted to speak. I was just agreeing.

**Madam CHAIRMAN:** It is up to the Committee. On a case by case basis, as we receive the submissions then, how do we treat to determining?

**Madam DEPUTY CLERK:** On a case by case basis you would then group all of the oral presentations together and then decide on a date when each party will come and give their submissions to the Committee as a whole. Do you understand?

**Ms. SHAWN RAINE BELLE:** Madam Chairman, I just wanted to ask about the listing of the entities that will be expected to make submissions. Now, it is noted that CPC for instance was included but the CPC provides the service of drafting the legislation and we do not conceptualise or originate any policy. From that perspective, we are a technical partner; we are not expected to give submissions or commentary on Bills. I just wanted to say that the CPC should probably be removed. Thank you.

**Madam CHAIRMAN:** I see no other requests to comment under matters arising.

**Mr. T. A. PRESCOD:** This is just a reflection. The rationale that I saw for taking the two (2) Bills together is grounded in the element of time. To me, I believe it is better

to speak of the two (2) Bills complementing each other and but I do not think we should say that we will deal with it because of any limitation of time so to speak. If a detail of comprehensive discussion on this specific matter requires a little more time, that it is the primary point that I am seeing here with the justification of taking the two (2) Bills together. Probably there needs to be some amendment that would include how the two (2) Bills complement each other. Yes, it says here that:

*"The Committee agrees to consider Bills together to avoid redundancy and overlapping thereof. It is felt that the Bills were dealt with separately and the Committee would take more time to consider work in a timely, sensitive period which is a matter they wish to avoid."*

I think that we should say about the Bills because of the nature of the two (2) Bills, that they complement each other, more so than to place the emphasis on time. I do not know if that is my understanding.

**Madam CHAIRMAN:** Yes. The Minutes of today's meeting would reflect very clearly the comprehensive position that was put to us from our technical support with the Chief Parliamentary Counsel (CPC); the rationale behind having the two (2) Bills being separated. Senator Rogers.

**Senator Rev. Canon Dr. J. A. ROGERS:** Madam Chairman, I am just sitting here going through this and I sit on another Committee that deals with submissions from the public as well. We have received a considerable amount of submissions on child protection, parents' rights, *et cetera*. Can there be any cross-fertilisation where some of those things can seep into this Committee?

**Madam CHAIRMAN:** Do you mean to narrow the responsibility of the other Committee and expand this one?

**Senator Rev. Canon Dr. J. A. ROGERS:** No. It may be that some of those things do not relate to the other Committee and may be better dealt with here. I do not know if there is any legal...

**Madam CHAIRMAN:** Deputy Clerk? The question is whether from the Constitutional Reform Commission; submissions that have been made which may relate more directly to the work of this Committee and perhaps people could even have misdirected those submissions. Is there any opportunity for the Constitutional Reform Commission to share submissions with this Committee for its consideration?

**Madam DEPUTY CLERK:** To be quite direct, Madam Chairman, I do not see any issue arising there with the Constitutional Reform Commission making submissions here on these two (2) respective Bills.

**Madam CHAIRMAN:** If the Constitutional Reform Commission then so desires, they can share the submissions with this Committee? Is that what you are saying?

**Madam DEPUTY CLERK:** Yes, Madam Chairman.

**Senator Rev. Canon Dr. J. A. ROGERS:** I am just speaking. I would have to speak with the Chairman. Thank

you.

**Mr. T. A. PRESCOD:** Madam Chairman, if the Committees are functioning simultaneously, how would you do that? At different points, the Constitutional Reform Commission would pause and submit some of the things that require constitutional change to us?

**Senator Rev. Canon Dr. J. A. ROGERS:** No. It was not about that. It was that submissions came in from the public and they may not necessarily relate to the Constitution but may more relate to this.

**Mr. T. A. PRESCOD:** You would have to notify the persons who sent them that you are going to resubmit it to this Committee? The truth is that if you are going to make statutory changes down here, then the constitutional changes are going to have a fundamental impact on the statutory adjustments and probably the technical officer. We would need to have those as early as possible, if the final decisions are supposed to make sense.

**Madam CHAIRMAN:** If the Constitutional Reform Commission so determines that they want share or that they would share. You are saying procedurally, they would still have to indicate to the people who submitted that you are directing or sharing the submission with this Committee, so that if called upon for instance, there is no surprise to them that they are coming before our Committee.

**Mr. T. A. PRESCOD:** This is a time, Madam Chairman, that we have to move cautiously on so many different things.

**Madam CHAIRMAN:** Yes, in everything.

**Mr. T. A. PRESCOD:** We do not want to make any blunders or create greater embarrassment.

**Madam CHAIRMAN:** Recognising, Senator Brathwaite.  
**Senator Dr. The Hon. C. W. DaC. BRATHWAITE:** Thank you very much, Madam Chairman. I have two (2) comments. Firstly, in looking over the draft that has been presented to us on the Care and Protection of Children which is the first piece of draft legislation. One of the things that I found that I think is missing, in my opinion, is a section on the responsibility and rights of parents. When we begin to discuss children, it seems to me that primary interaction that takes place at the level of the society and the community is the relationship between the child and its parents.

I was very concerned that the legislation on the care of children seemed to be very focused on the care of children but does not, in my view, address the responsibility and the rights of parents. If we do not incorporate, in my view, the responsibility and rights of parents, we may have a situation where the children will in fact be given rights that conflict with the responsibility and the rights of the parents. I saw this in one of the submissions that I was reading last night; where they were talking about children between the age of 10 and 19, having the possibility of getting medical attention without informing the parent.

I believe that as we proceed, we have to be very clear that this delicate balance between parental responsibility and the right of the child and the parent, is

carefully managed. It is in there; that interaction, I believe, that a significant amount of conflict; difficulty and stress has been generated as a result of this relationship. As we move to a situation where children are clearly being given more and more rights, I think we also have to make sure that the responsibilities and rights of the parents are also protected in that process. Otherwise, we may create an imbalance where the child is in fact protected and supported in issues that may conflict with what we generally perceive as the role and responsibility of a parent.

If a ten-year-old can go out and get a medical decision being made, without informing the parent, I think we are beginning to lose that parental relationship that is so critical. I make that point in the context of how we are going to manage all of the submissions that have been made. I noted, looking at the documents that have been received so far, there is a significant amount of reading that has to be done there in order to capture what has already been said.

I feel that in order to be fair to those who have made submissions; we need a little bit more time for analysis of those documents before we can come to any conclusion as to what should be incorporated; what should be gleaned; what should be modified. I think we need a little bit more time to study those documents. I would like to have at least a week to study those documents that have been submitted to us. I just took a preliminary look at them last night but I do not think that is enough. I think we need, at least in my case, I need a little bit more time to review these documents and to see what issues have been presented and how they relate to that delicate balance between the child and the parent. Thank you.

**Madam CHAIRMAN:** Ms. Belle is going to come in but you meant on the last point you made in terms of time; you meant as it relates to the submissions of Mr. Hutson Inniss and Mr. Vincent Smith or you meant in terms of all of the submissions?

**Senator Dr. the Hon. C. W. DaC. BRATHWAITE:** In terms of all the submissions. When will we have the time to really review them and extract what we think are the substantive issues that must be considered? I think we need time to do that.

**Ms. SHAWN RAINE BELLE:** Madam Chairman, just to make the observation that the Child Protection Bill is the jurisdiction of that piece of legislation would be triggered by certain parameters as set out in Clause 5, where the child is in need of care and protection. This is where you will understand why the rights of the child would have been emphasised as much as they are in the Bill, so I would take the time to just go through the grounds.

A child is in need of care and protection where: They do not have a parent; where the parent or guardianship has a mental or bodily disease; infirmity or other incapacity or in any other circumstances provided for his/her upbringing and there is no available person or persons capable or fit to undertake the care of such a person; has suffered harm caused by neglect of the child; failure of the parent to supervise or adequately supervise or

protect the child; the child is a victim of abuse or exploitation or will suffer abuse or exploitation; has been abandoned or deserted by his parent; has been exposed to danger moral or otherwise; has suffered physical, emotional or psychological harm; has suffered mental or emotional or physical or developmental conditions that requires treatment and care to prevent or ameliorate the effects of the condition and the parent does not or refuses to obtain treatment or is unable or unavailable to consent to those services or treatment, is in custody of the director meaning the Director of Protection of the child.

Also: where the child is beyond the control of the parent; where the child is a threat to himself; where the child is less than 12 years old and has committed acts which would ordinarily constitute an offence under the Second and Third Schedule of the Child Justice Act or has been determined to be in need of care and protection under, well it says Section 39, but there needs to be an intervention to change the reference to 40 of the Child Justice Act.

Those are the circumstances that we are talking about in terms of triggering the jurisdiction of the piece of Legislation, so in that context then the requirement for intervention for the child in those circumstances. That is why there is this emphasis on the protection of the rights of the child because the context is abuse so that you are then intervening to protect that child from such abuse or from such circumstances as would render them not being in proper care and I just wanted to make that very clear. Thank you.

**Madam CHAIRMAN:** Deputy Chair.

**Deputy CHAIRMAN:** Senator Brathwaite, I do not know if you have gotten it as clear, but if I may just share a little experience with you from my days. So, in circumstances where you have and what would have been very prevalent in which we like to keep under wraps sometimes. You have, especially girl children being physically and sexually abused by parents and you have them in custody. Under the circumstances, I am sure you will understand that if something has happened to them within the custody, let us say The Government Industrial School or a children's home or wherever it is. You are definitely not going to be in a position to be calling the person who is abusing this child over and over before you can make a decision for them to have treatment or whatever, that they need immediately. I think what we have to bear in mind, is within the context of what the situation is and I think this tells me right off the bat that we need in terms of, I guess, explaining of what these two (2) Bills did to the general public; that there is going to be a need for us to break these things down into simple scenarios that people can understand, so that you would not get the types of responses like that on the concerns will be allayed, once we do that. I just wanted to make that point.

**Madam CHAIRMAN:** Proceed Senator.

**Senator Dr. the Hon. C. W. DaC.**

**BRAHWAITHE:** Madam Chairman, if I may, that means to a larger extent, the context within which this Bill is framed, is a child in need of care and protection. The other

children do not matter. We are not concerned about them. They are okay but the child that is in need of care and protection is the focus of this Bill. When these submissions come in, we have to be clear that all other material does not apply. That is very important because they are a lot of things that are coming to us which are not subscribed within that context.

There are wider issues and we have to be careful that we do not get trapped by those wider issues because otherwise they will become unmanageable. There are so many issues about children out there. I thank you very much for the explanation because under Section 5, it is clear what we are dealing with. We are dealing with situations where there is a need for care and protection of the child. Only those situations. We are not going into that wider issue of the child/parent relationship. No. It is where the child needs care and protection. If that is so, Madam Chairman, I am clear.

**Madam CHAIRMAN:** Thank you. As we proceed through the meetings, I imagine that Committee Members, as we read through and reflect on sections of the two (2) pieces of Legislation; we may have questions which then I believe are technical support would be able to clarify and explain as she has been doing so far, for our benefit.

What I wanted to propose is that even as we consider the written submissions and that is to a large extent why Ms. Belle is also here; as we consider the submissions we may not see directly, even if we have enough time to read directly where it relates but we could get direction as to which sections of the legislation, a particular submission requires our consideration and as we reflect on the written submissions then; we go through systematically so we may not pick it up in our own reading but as we discuss, that is also part of the Committee's remit. Ms. Belle, I know you wanted to come back in.

**Ms. SHAWN RAINE BELLE:** Madam Chairman, just in terms of approach. Usually, before Committees of this kind, there is an Introduction or a Description of the Bills.

**Madam CHAIRMAN:** With the Committee's consent, the next thing would have been the technical support from the Chief Parliamentary Counsel Office where we would go through the introduction which would be on top of explaining what you did previously about why the two (2) pieces of legislation. Maybe if we can permit for that, it may lead us smoothly into the next item of examination of written submissions but before Ms. Belle comes in, if you will, I recognise Mr. Prescod.

**Mr. T. A. PRESCOD:** The law ought not to be ambiguous in anyway. It must be as clear as possible and I believe it ought to be clear to the common man. There might be a view that the format for statutes are fixed and universal. That might be a view, but Senator Dr. Brathwaite asked a question and I believe that he asked a question in relation to the rights of the parents as well as concerning the rights of the child. Is it a possibility, for the sake of lay-people like me; that they can be some preamble, that makes it unequivocal that this law, specifically, is about the protection and the rights of children and clearly explaining

to every man and woman that it does not include the other extraneous matters because there is still a major debate. It has to be real. There is a major debate, in my view, a body of pollution and sometimes I am wondering if, in your profession, Ms. Belle, the format that is being used is the only format that is accepted among legal practitioners across the world or if you can make a modification to suit the political, cultural and legal environment of the common man; so that you can explain early that that is not the consideration in this specific piece of Legislation.

**Ms. SHAWN RAINE BELLE:** Madam Chairman, through you, just to say that the Objects and Reasons which would then form the long title of the legislation, speaks to making provision for the reform of the law on the care and the protection of children and then as you read the Bill, the Clause 2 then points you to Clause five (5), which then goes into the larger explanation; so that is the approach to legislation is drafted. You cannot avoid the reading of the legislation because at the end of the day, that is what provides the context. The pre-ambular approach that you are suggesting would not totally eradicate that because you would still have to go and read Clause 2, to read Clause 5, because the care and protection is contextualised by those Clauses; so I am just pointing to the fact that there are already markers for the reader to understand the context of the Legislation.

**Madam CHAIRMAN:** With that, I think a part of what is expected and certainly this Chair expects you to do, is to make us experts at these pieces of legislation by the end of this process. It would be a good point to ask you to come in and walk us through the Introduction to the pieces. The Explanatory Notes which we received yesterday were quite useful; certainly from my personal standpoint but I would allow you to walk us through that Introduction right now. Thank you.

**Ms. SHAWN RAINE BELLE:** Madam Chairman, as you alluded to, you would have alluded to the fact that the CPC would have provided an explanatory memorandum for the Child Justice and the Child Protection Bill. I am going to guide you through the discussion using an expanded explanatory memorandum just to give some background into what informed the Bill. I can make those expanded explanatory memorandums available to the Committee for consideration.

Madam Chairman, I was just wondering whether you wanted to consider the Child Protection Bill and then Child Justice Bill; with the Child Protection Bill being the shorter of the two (2)?

**Madam CHAIRMAN:** Yes.

**Ms. SHAWN R. BELLE:** Alright. Thank you, Madam Chairman. Just to indicate that the Child Protection Bill makes provision for the reform of the law on the care and the protection of children in Barbados with "care and protection" being defined specifically in Clause five (5) and we went through the various grounds but for background, usually in context of abuse or other forms where the child would be neglected in some way or vulnerable in some way.

The Child Protection Bill is being piloted by the Ministry of People Empowerment and Elder Affairs. The Bills inform by reference, to the model Bill on the Child Protection Development Project intended to modernise family and child related legislation. This was an observation made by Ms. Jacqueline Sealy-Burke, who is a consultant who has worked with both the Ministry of People Empowerment and Elder Affairs with the Child Protection Bill and with the Child Justice Bill as well.

It was also informed by reference to the Organisation of Eastern Caribbean States (OECS) Care and Adoption Bill; the Child Protection and Adoption Act in Grenada; the Children's Authority Act in Trinidad and Tobago and of course, the United Nations Convention on the Rights of the Child. The Bill includes guiding principles that are consistent with the United Nations Convention on the Rights of the Child in relation to obligations for the child's participation in the decision-making as evidenced in Clause 7 of the Bill and the paramountcy of the best interest principle that is in the best interest of the child, as explained under Clause 3(2) and Clause 9(3).

It also articulates the key procedures involved in the care and protection process, from reporting through investigation and placement. It recognises the need for care planning and offers some helpful guidance in the general approaches taken to this and other essential Child Protection Procedures. It establishes a number of new and much needed Court orders to assist in the protection, rehabilitation and the re-integration of children. This is dealt with in Part IV that articulates the Court orders that can be made by the Court, in relation to those areas.

It also recognises the interception between children in conflict with the law and the need for care and protection and provides for the re-routing of such matters from the jurisdiction of the Child Justice Bill to the jurisdiction of the Child Protection Bill. This is mostly seen in Clause 33, dealing with the Residential Protection and Care Treatment Order. Additionally, Clause 33 addresses children in conflict with the law who are under the age of 12; who would not be considered to be criminally responsible but in light of the seriousness of their actions, are deemed to require care and protection and residential supervision under the Child Protection Bill.

Part II deals with administration and introduces some new actors in relation to the Administration of Child Care and Protection in Barbados and these new actors are identified as follows: The Child Protection Authority established by Clause eight (8) replaces the Child Care Board established under the Child Care Board Act, CAP 381, to be repealed by Clause 68 of this Bill. The Child Protection Board established by Clause 10, will be responsible for the formulation of policy and the general administration of the Child Protection Authority.

It should also be noted that Clause 67 speaks to the transfer: of assets; liabilities; obligations; rights; privileges and responsibilities for legal proceedings from the Child Care Board to the Child Protection Authority upon the

commencement of the Child Protection Act. Then there is the Director of Child Protection appointed by the Child Protection Board with the approval of the Minister under Clause 12 and the general functions of the Director are set out in Clause 12(3) but other functions and duties are set out throughout the provisions of the Bill. Finally, the staff of the Authority are to be appointed by the Child Protection Board under Clause 13.

I will now go into the sequential running of the Bill. Clause 1 states the Short Title. Clause two (2) speaks to the Definitions that would be utilised throughout the Bill. Clause three (3) identifies the purpose of the Bill and you would take note that this recognises adherence to certain understood international norms, such as, those encapsulated in the United Nations Convention on the Rights of the Child and the Universal Declaration of Human Rights, as well as those international instruments to which Barbados has become a party.

We also would make sure that you understand that the purpose is for the promotion of the welfare of the child; providing care and protection for the child; protection of the child from neglect and abuse and also the best interest of the child is to be given the paramount consideration. In understanding what 'best interest' means you have to look to Clause 3(2). In determining what is in the best interest of the child, the following matters must be taken into account:

- *The safety of the child;*
- *the capacity of the parent to properly discharge his/her parental responsibility;*
- *the physical, mental, emotional or psychological needs and development of the child;*
- *the appropriate care and treatment required to meet the needs and development of the child;*
- *where appropriate, the views of the child;*
- *a secure place for the child;*
- *the positive development of the child as a member of a family;*
- *the love, affection and ties between the children and other persons to the life of the child;*
- *the capacity of the persons other than the parent to exercise the custody rights and duties in relation to the child and;*
- *the continuity of the care for the child and the possible effect and disruption of the care of the child.*

Even in the context that we discussed in terms of intervention for care and protection, there is not a complete discarding of the child's relationship with other family members and important adults in their life. It is just that you have to take in a complete context in promotion of the best interest of that child, given the circumstances. I just wanted to give a highlight to that in particular.

Clause four (4) sets out the principles to be

applied for the general administration of the Act. Again, I will take the opportunity to highlight this:

- (a) *the safety and welfare of a child shall be given paramount consideration in all actions and decisions in relation to the child;*
- (b) *the safety and welfare of a child who has been removed from his parent shall be paramount to the rights of the parent;*
- (c) *where a child is able to form his own views on a matter concerning his safety or welfare*

*(i) he/she shall be afforded an opportunity to freely express his views; and*

*(ii) his/her views are to be given due weight in accordance with his developmental capacity and the circumstances;*

- (d) *the least intrusive intervention in the life of a child and his/her family shall be taken in order to*

*(i) protect the child from harm; and*

*(ii) promote the development of the child;*

- (e) *where a child is temporarily or permanently deprived of his family environment or cannot be allowed to remain in that environment in his/her best interest*

*(i) the child shall be entitled to special protection and assistance from the Government of Barbados; and*

*(ii) his name and identity shall, where practicable, be kept confidential;*

- (f) *where a child is removed from the home of his/her parent under this Act, whether temporarily or permanently,*

*(i) he/she shall be entitled to a safe, nurturing, stable and secure environment; and*

*(ii) the child may retain relationships with people significant to the child, including his parents, relatives, peers, family friends and community, unless it is contrary to his/her best interest; and*

*(iii) where a child is placed in an approved child care centre, arrangements shall be made in a timely manner to ensure the provision of a safe, nurturing, stable and secure environment.*



Those are the principles that govern the administration of the Act by all the major actors; those actors that I would have highlighted in the beginning as well as the court, so it is important for you to understand that.

As indicated, we have Clause five (5) which speaks to the Definition of the care and protection of the child and that is what triggers the jurisdiction and we would have gone through that. Clause six (6) states that the Director of Child Protection may request the assistance of certain agencies in promoting safety and welfare of the child and imposes a duty on those agencies to use their best endeavours to comply with the request for assistance from the Director. Clause seven (7) gives the child the right to participate in decisions made pursuant to the proposed legislation, which are likely to impact the child's life. This is something that is a part of the growing social mores that a child should have the opportunity to participate in the decisions and this is something that is a growing trend in recent times and you give the parameters for the child to give expression to their wants and needs. These would be given the appropriate weight in the context.

**Madam CHAIRMAN:** I just wanted to indicate that if there is anything said at any point in time, would you prefer us to hold questions until the end or if it is a particular point that we can get you to clarify?

**Ms. SHAWN RAINE BELLE:** Madam Chairman, I am not opposed to entertaining questions during the presentation. It is just up to you in terms of the time taken to discuss.

**Madam CHAIRMAN:** Proceed. I just wondered in case there was anything buzzing but sometimes we may find our answers as the presentation continues.

**Ms. SHAWN RAINE BELLE:** Thank you, Madam Chairman. Sorry about that. I am just getting back my bearings. That is fine, I am just making sure that you are also here with me because this is a lot of information and I am guided by that. We would have spoken about Clause seven (7), giving the parameters for the participation of the child in making certain decisions that impact upon his or her life. Part two (2) speaks to administration and I will not go particularly into these because we would have identified the actors but mostly to say that it would be regulating the operations of the Child Protection Authority that would be taking over from the Child Care Board. Then the Child Protection Board speaks to the administration of the Child Protection Authority and would be dealing with their policy and their day-to-day operations. Then the Director is the person who would be piloting a lot of the day-to-day management and also playing significant roles in dealing with the interventions that you will see in the next part. Then, the staff is there to support the operations of the authority generally.

I will just go now to Part three (3), dealing with the interventions and the investigations because this is the part that then speaks to when the Director and Child Protection Authority can make their interventions as conscripted or restricted by Clause Five (5).

Clause 22 under Part three (3), deals with

interventions, reports and investigations. Clause 22 speaks to the circumstances where the Director of Child Protection may intervene to assist a child in possible need of care and protection. In determining whether there would be a need to intervene, you have some triggers; there is a request that has to be made in relation to the child to the Director or he receives a report, and that report being under Clause 24, or it appears to the Director that the child is in need of care and protection.

Clause 23 sets out the circumstances where the request for intervention of the Director can be made. Then, Clause 24 imposes obligations on certain persons to cause to report circumstances where your child is in need of care and protection to the Director of Child Protection or Police Service.

Now, I am going to take some time to focus on this because this is a major obligation that is imposed on these persons because if you fail to follow through with that obligation, there is criminalisation of that failure.

Clause 24. (1) This section shall apply to:

- a) a parent;
- b) a medical practitioner, a health practitioner, a dental practitioner, a nurse or mental health practitioner;
- c) an administrator of a hospital or medical facility;
- d) a school principal, teacher or other teaching professional;
- e) a social worker or other social service professional;
- f) a law enforcement officer;
- g) an internet provider, film technician, computer technician or telecommunications technician;
- h) any person who provides health care, welfare, education, religious, child care or law enforcement services, wholly or partly to a child; and
- i) any other person who by virtue of the nature of their work, owes a duty of care to a child."

(2) A person listed under subsection (1) who has knowledge or has reasonable grounds to suspect that a child is in need of care and protection shall be under a duty to

(i) immediately report or cause to be reported the circumstances to the Director or a police officer; and

(ii) provide the Director or a police officer with such additional information as is known or available to the person.

(3) Where a person makes a report to a police officer under subsection (2)(a), the police officer shall transmit the report to the Director within 24 hours.

(4) Subsection (2) shall apply notwithstanding

*the confidential nature of the information on which the report is based.*

*(5) Nothing in this section abrogates any attorney-client privilege.*

*(6) A report made under subsection (2) may be made anonymously.*

*(7) A person who fails to comply with subsection (2) is guilty of an offence and is liable on summary conviction to a fine of \$20 000 or to a term of imprisonment of two years or both.*

*(8) A person who makes a report in good faith shall not be liable for prosecution.*

*(9) A person who intentionally makes a false report or provides false or misleading information is guilty of an offence and is liable on summary conviction to a fine of \$10 000 or imprisonment for one year or both.*

Please remember that in the expression of penalties within Barbadian legislation, there are always expressed to the maximum, so that the Interpretation Act says that you would not be punished exceeding that as stated by the enactment.

You can be punished with zero or to the sum or zero or to the years, but no more. I just wanted to point that out. This particular Section is very crucial in triggering the intervention of the Director and also, I feel that there is a need to emphasise that these specific members of society who have been identified, are under an obligation to make sure that they do the necessary reporting of abuse.

**Madam CHAIRMAN:** Senator Brathwaite do you have a question?

**Senator Dr. the Hon. C. W. DaC. BRATHWAITE:** Madam Chairman, may I raise a query with respect to Clause 25 (regarding) Investigation of the report. It says, "Where a report is made under section 24, the Director shall immediately conduct an investigation to determine whether the child is a child in need of care and protection." Now, what the Clause does not say is who is going to do that investigation. What is the timeframe for the investigation to be made? What is the criteria for the Director to make such a decision? This is because when I go onto Clause 26, it just refers to the fact that the Director shall keep a record of all reports and any action taken in response to reports. This Clause does not tell us when, how and where the investigation will be carried out, in order to determine what action has to be taken if the child is in need of care and protection. I just have that query. Thank you.

**Ms. SHAWN RAINE BELLE:** Madam Chairman, Clause 25 just creates the obligation for the Director to make a report to conduct the investigation. In terms of how the conduct of the investigation will go, that is set out in Clause 28. That includes any report made under Clause 24.

In terms of what informs the analysis in relation to the matters dealing with the investigation, Clause 28 states:

*(3) An investigation by the Director may include an analysis of the following matters in relation to a child:*

*(a) medical;*

*(b) health;*

*(c) social;*

*(d) residential;*

*(e) educational;*

*(f) economic; and*

*(g) any other factors affecting the life of the child.*

*(4) In conducting an investigation under this section, the Director may*

*(a) visit the residence of the child and other places frequented by the child;*

*(b) transport the child to a place considered by the Director to be appropriate;*

*(c) interview*

*(i) the child;*

*(ii) a parent or relative of the child;*

*(iii) any person who cares for the child or any person who has had an opportunity to observe the child; or*

*(iv) any person who provides health, social, educational and other services to the child or a parent of the child;*

*(d) cause an examination to be made of the physical, mental and emotional health and development of the child by a medical practitioner or other medical professional;*

*(e) require information to be provided to the Authority from medical, social, educational and other service records concerning the child, a parent of the child or both;*

*(f) request that a parent of a child undergo a physical, mental or psychological examination or any other assessment; or*

*(g) consult with such other persons and gather such other evidence as may be necessary to complete the investigation.*

*(5) In conducting an investigation or assessment under this section, the Director shall have regard to any wish of the child taking into account*

*(a) the age and maturity of the child; and*

*(b) the extent to which the child appears to be in need of care and protection.*

*(6) The Director may apply to the court for an order requiring any person to*

*(a) provide such information under subsection (5) to the Director;*

*(b) allow the Director access to a person, place or record; or*

*(c) cooperate with any investigation by the Director.*

The report shall not be provided under subsection 7 unless the Director has reasonable grounds to believe that the report will endanger the safety of the child or the criminal investigation in relation to the matter. Those are

the parameters in which the investigation will be conducted. I do not know whether that answers but...

**Senator Dr. The Hon. C. W. DaC. BRATHWAITE:** Thank you. I did not see that part of the Bill at this time. That explanation is very appropriate.

**Ms. SHAWN RAINE BELLE:** Yes, Madam Chairman. Thank you. Having gone to Clause 28, we can go to Clause 29 making provision for the actions of a Director in conducting the investigation and making an assessment. Clause 30 sets out the circumstances where the Director may decide not to take action in relation to whether a child requires care and protection. Clause 31 sets out the circumstances where the Director may decide to remove a child from a place or premises; where he/she believes the child is in immediate or imminent jeopardy and there is not enough time to apply to the court and the procedure to be followed by the Director after such removal.

This is very critical. You would recognise that in the list of court orders, there is an Emergency Order that can be applied for, but this particular Clause is crucial where the circumstances are particularly heightened that jurisdiction will be invoked. You would recognise that there are important constraints in terms of involving the police. It has to be a situation where you can establish immediate, imminent jeopardy and that there is truly not enough time for the court to be applied to. Those are important constraints on the part of the Director in those specific circumstances.

**Mr. T. A. PRESCOD:** Madam Chairman. Does the Director have exclusive rights to impose these different conditions and restrictions on the decision of the process; how it goes forward? Is it a committee of specialists that also work in collaboration with the Director, in making these decisions? At that point, is there any provision for the parent, accompanied by an attorney to intervene in questioning the process? Does that right exist in this legislation?

**Ms. SHAWN RAINE BELLE:** Madam Chairman, just to remind you that the Director would be vested with certain qualifications in child care and protection, so their expertise in the area would be direct. This is why you put that person in the first place in terms of dealing with the day-to-day issues and it happens now with the person who is in charge on the Child Care Board (CCB). In terms of making objections, that is dealt with in Clause two (2), where the parent can make an application to challenge. There is a 24-hour period that would have to be lapsed in relation to the challenge.

Those are the specific parameters for the operation but it was felt that that Section was truly needed on the ground. If you spoke to the experts, they indicated that this kind of provision was needed on the ground to deal with these special circumstances. My comments here would not be able to give fully fleshed examples of those that would have to be a submission made by those specific experts but they are the ones that would have requested a provision of this type. It would be important then to invite their comment in relation to the need of this particular

Section.

Thank you.

**Mr. T. A. PRESCOD:** Obviously, this draft Bill comes from within a specific or a number of jurisdictions that would have influenced the provisions that you have here.

**Madam CHAIRMAN:** Just speak into the microphone a bit.

**Mr. T. A. PRESCOD:** I said, obviously, the provisions that we have here in this legislation would have derived from some other jurisdictions. Is there evidence that the Director in that jurisdiction unilaterally makes these decisions without the input of the required specialists that would direct him/her to do what we consider for him to make the best decision?

**Ms. SHAWN RAINE BELLE:** Madam Chairman, just to indicate that Director is a specialist. You would not recruit someone who would not be a specialist in the area of the field. You would see that such carrying out of those types of actions is replicated in the model legislation, as well as other pieces of legislation in existence that informed the Bill.

**Madam CHAIRMAN:** Presumably, as well, I know like where you have, for example, the Labour Department, you would ascribe the responsibility to the Chief Labour Officer but there are officers in the department that are doing the investigations and reporting to the Director who is an expert generally in the field. The Director will make the determination. I think that foresees the same kind of...

**Ms. SHAWN RAINE BELLE:** This is the same structure and would have been highlighted in the actors, like the staff of the Authority.

**Senator Rev. Canon Dr. J. A. ROGERS:** Madam Chairman, through you, I know that there is already the Child Care Board and there are already certain practices involved. I was just going through here. What happens to the child who may need care and protection but that is noticed by any of the entities listed here? I am just picturing a child who is being abused at home by someone who has authority over them and they trust. Where do they go? Do they have access to the Authority?

**Ms. SHAWN RAINE BELLE:** The child can make a request. This is actually dealt with at Clause 5. It is also dealt with in Clause 23 that allows for the child to then make a request for intervention.

**Ms. SHAWN RAINE BELLE:** We move on then to Part four (4) which speaks to the Care and Protection Orders that the court can make in relation to care and protection. Clause 32 itemises those orders. You would see:

- (a) a care order;
- (b) a child assessment order;
- (c) a compulsory assistance order,
- (d) a contact order,
- (e) a counselling or treatment order,
- (f) a custody order,
- (g) an emergency protection order,
- (h) a recovery order,
- (i) a residential protection and treatment

- centre order,*
- (j) *a supervision order,*
- (k) *a support services order,*
- (l) *an order to accept undertakings: or*
- (m) *any other order the court thinks fit.*

In going through this part, then we will speak to the different types of orders in a little more detail. In Clause 33 that makes provision for the Residential Protection and Treatment Centre Order in circumstances where the child is required to reside in a Residential Protection and Treatment Centre (RPTC). This is where there is the necessary interaction between the Child Justice and The Child Protection Bill so you would see:

*“33 (1) Where the court is satisfied that a child brought before it is*

- (a) *less than 12 years old and has committed acts which would ordinarily constitute an offence as listed in the Second Schedule or the Third Schedule to the Child Justice Act, 2023 (Act 2023);*
- (b) *a significant threat to themselves or others; or*
- (c) *in need of care and protection pursuant to section 39 of the Child Justice Act, 2023 (Act 2023)*

*the court may make a residential protection and treatment centre order to have such a child reside in a residential protection and treatment centre for a period not exceeding three years.”*

Now this three-year period is an international standard and in recognition of the fact that the emphasis is on rehabilitation and care not punitive aims and that any form of confinement or detainment must be restricted, considering the potential for the child to be rehabilitated and to have an aim of introducing them back into normal society, being fully adjusted.

So, it is important to note that the period for the confinement should not exceed three years but the court has a discretion between them to decide for how long the confinement should last and there is a period of review of the said period as spoken to in Clause 33 (3).

Clause 34 makes provision for Emergency Protection Orders where the child may require care and protection in certain circumstances as a matter of urgency. Clause 35 makes provision for the court to make an Assessment Order which is done as a predicate to enabling the court to decide on any other Orders that may be required irrespective of a child in need of care and protection. Clause 36 makes provision for the court to make a Social Inquiry Report which may be done as a predicate to the enabling the court to make or decide on other Orders for a child in care of protection.

Clause 37 makes provision for the court to make a Care Order which is made for the purpose of removing a child who is in need of care and protection and putting them

in care of the Director of Child Protection. Clause 38 makes provision for the court to require the Director of Child Protection to prepare a care plan before a Care Order is made pursuant to Clause 37. Clause 39 states that the Child Care Centre to which a child may be put have delegated care responsibility of the child and delegated care responsibility is defined by Clause two (2).

Clause 40 makes provision for the court to make a Supervision Order on the application of the Director of Child Protection where a person is recommended by the Director to supervise a child in need of care and protection. The duties of the Supervisor recommended pursuant to Clause 40 are set out in Clause 41. Clause 42 makes provision for the court to make a Custody Care Order which involves placing the child in need of care and protection in the custody of the Child Protection Authority. Clause 43 makes provision for the court to make a Recovery Order to recover a child where a child is unlawfully taken away from a person who has care and responsibility for the child or the child has run away or is missing. Clause 44 makes provision for the court to make a Compulsory Assistance Order to provide intensive care and support to protect a child from suicide or any other life threatening or serious disruptive, self-destructive behaviour.

Clause 45 makes provision for the court to make a support services order, directing a person or Child Care Centre named in the order to provide support for the child. Clause 46 makes provision for the court to make a Counselling or Treatment order for the purpose of providing counselling; therapy or any form of treatment necessary for the well-being of the child.

Clause 47 makes provision for the court to make a Contact Order which specifies the circumstances in which persons may have contact with the child in need of care and protection. Clause 48 makes provision for the court to accept an undertaking devised with the parent in relation to the proper care and guardianship of the child.

Clause 49 makes provision for the Child Protection Authority to provide support, provide an equip and maintain a Child Care Centre for the accommodation of children in its care and Clause 50 makes provision for the Director of Child Protection to arrange with parents of a child for contributions according to their means towards the maintenance of a child in the care of the Authority.

Part five (5) deals with Child Care Centres so this was specifically informed by reference to the OECS Care and Adoption Bill and this deals primarily with those centres that are approved as Care centres for children in need of care and protection so that Clause 51, sets out the principles that are used to guide the operation of these Child Care Centres. So just to go through the principles for Clause 51:

- (a) *the best interests of the child shall be of paramount consideration;*
- (b) *a child care centre shall provide care that is safe, positive and nurturing;*
- (c) *a child care centre shall promote the*

- educational, social and developmental well-being of a child; and*
- (d) *a child shall receive services that meet his individual needs, including the needs of a child with a disability, and enhance his or her physical, emotional, cognitive, social and cultural development.*

Clause 52 deals with the procedures to be observed in relation to Foster care. Clause 53 empowers the Minister to prescribe the grant of approval of Child Care Centres by regulation. Clause 54 states the purpose of the Child Care Centres. Clause 55 states the Child Care Centres shall have delegated responsibility of a child and the term "*delegated care and responsibility*" is defined by Clause two (2). Clause 56 imposes a duty on the Child Care Centre and the Director to maintain contact with parents or relatives of a child residing in a Child Care Centre and makes provision for the approved Child Care Centres and the Director to facilitate contact between the child and his parent and relatives.

Clause 57 sets out the procedure for application for recovery order pursuant to Clause 43, so that is where the child has run away or is missing or has not been returned, so that is the procedure that is invoked there. Clause 58 makes provision for the court to make an order to direct a child or a parent of a child to contribute to the maintenance of a child residing in a Child Care Centre and Clause 59 prohibits the infliction of corporal punishments; severe or frightening methods on a child placed in a Child Care Centre; so of course this is coming out from the UN Convention on the Rights of Child in making sure the child is not subjected to torture or any inordinate punishments sorry.

**Madam CHAIRMAN:** Senator.

**Senator Dr. the Hon. C. W. DaC. BRATHWAITE:** Thank you very much, Madam Chairman. I note Clause 59(1) makes it clear that corporal punishment; severe or frightening measures shall not be inflicted on a child placed in a child care centre in accordance to the provisions of the Act and as I read this, I wonder whether the Act in the development of the role of the child care centre provides any alternatives to corporal punishment and what are the stipulations for discipline and the maintenance of discipline in the child care centre.

If the Act says there shall not be corporal punishment, there shall not be severe or frightening measures which are agreed to and these things should not be done, what are the alternatives? What are the stipulations for the maintenance of discipline in the child care centres? I thought I would raise that question.

**Ms. SHAWN RAINE BELLE:** Madam Chairman, just to remind participants that Clause 51 sets out the general provisions for the operation of the child care centres and you would see that they have to act in the best interest of the child.

In terms of the disciplinary matters and so on, those are more likely going to be addressed in the

Regulations and those Regulations would be made by the Minister to deal with this aspect of the running of the child care centres. That would mean subsidiary legislation that is made under this parent legislation that would be to come.

*Asides.*

**Ms. SHAWN RAINE BELLE:** Yes. So you would recognise then that the legislation is to be commenced on the date and set out in the proclamation, so that device then gives time for Ministries to put the necessary arrangements in place including the Regulations; so that when it is then commenced by Proclamation then the Regulations would follow shortly after and that would set out the parameters that you are speaking about in terms of the child care centres.

**Senator Dr. the Hon. C. W. DaC. BRATHWAITE:** Thank you.

**Senator J. A. KING:** May I ask: Would that also be the same for, let us say, for instance because in none of this have I seen anything as yet that speaks to, if you take a child who has a propensity to be violent and attacks a staff member and the staff member becomes incapacitated and cannot work based on this child, what measures will be taken? I am just asking if what you mentioned there if that would be dealt with in that timeframe.

**Ms. SHAWN RAINE BELLE:** Yes. It would be foreseeable that the Regulations would set out things for that as well.

Madam Chairman, going on to Part six (6) which deals with offences. Clause 60 states that leaving a child unsupervised or unattended is an offence. That will attract the penalty of \$25 000 or to imprisonment for a term of five (5) years or to both. Again, I remind the Committee that the penalties are expressed in their maximum as explained earlier. Also, that the terms "*unsupervised*" and "*unattended*" are defined in Clause 62.

Clause 61 makes it an offence for persons having custody; charge or care of a child to abuse; abandon; neglect; mistreat or expose the child to danger and fail to protect the child or cause the child by act of omission to require care and protection.

Clause 62 makes it an offence for a person to impersonate a member of the Board; the Director or a member of staff of the Authority.

Clause 63 makes it an offence for a person to obstruct or to threaten the Director or a member of staff in carrying out their duties in relation to the Bill. Part seven (7) is miscellaneous and deals with the various subjects.

Clause 64 makes provision for the exemption of the Authority from the payment of certain taxes and duties.

Clause 65 empowers the Minister to make regulations to give effect to the Legislation, so this is the empowerment of the Minister to make regulations to address those areas that require intervention for the better operation of the Act.

Clause 66 empowers the Minister to amend the First Schedule by order so this is due to the composition

and constitution of the Board, as set out in the First Schedule. This mechanism allows for that particular part of the Act to be amended quickly instead of going through the larger parliamentary process of amending the Bill and coming to Parliament, so that the Minister then can make the order in those circumstances to address something that is fairly routine and may need intervention quickly.

Clause 67 makes provision for the transfer of assets; responsibilities; duties; privileges; obligations of the Child Care Board established under the Child Care Board Act to be transferred to the Authority as established under this legislation.

Clause 68 makes provision for the repeal of certain cited Acts and the saving of certain cited Regulations so the Acts that are being repealed are the Child Care Board Act; the Prevention of Cruelty Act; the Protection of Children Act and the Young Persons Protection Act. As observed earlier, this particular Bill consolidates a lot of the usable material from those pieces of legislation and incorporates them into this present Legislation and so this Legislation represents a consolidation of all of those pieces of legislation into one Bill.

The Child Care Board Regulations and the Child Care Board Private Child Care Centres Regulations were preserved for the time-being until we can get the Regulations that are supposed to be made under this parent Bill as set out and this is just a practical matter in terms of administration to make sure that they are no *lacunas* that are created as a result of the passage of this Bill.

Clause 69 indicates that the consequential amendments made to enactments to facilitate the operation of the proposed Legislation are met and they are addressed in the Second Schedule. If I point you to the Second Schedule you will see a number of pieces of Legislation that it was determined that needed to be amended, in order to facilitate the better operation of this Bill. You would see the amendment of the Adoption Act; the Education Act; the Public Finance Management Act and the Statutory Boards Act; so those interventions were required as necessary to help with the functioning of this particular piece of Legislation and then finally, Clause 70 makes provision for the Act to come into operation on a date fixed by Proclamation so that deals with the text. The First Schedule deals with the Constitution and procedure of the Child Protection Board and the Second Schedule, deals with the consequential amendments.

That concludes my review of the Child Protection Bill. Thank you, Madam Chairman.

**Madam CHAIRMAN:** Thank you, Ms. Belle. I know that we had an opportunity to get clarification in between, so if there is no further clarification being sought...

**Hon. C. A. LANE:** Thank you, Madam Chairman. The reason I was so quiet during the exercise is because I actually had the privilege of going through this Bill already when it was at the Ministry. I went through it line-by-line with yourself and my colleagues. Subsequent to that, we had a situation in Barbados where we had the issue with the

two girls and if the Bill can speak to it, either the former or the present and I believe that they would have gone back to your office to see if we can have those little anomalies and nuanced cases addressed. In your opinion and based on your professional advice, would you say that there is enough provision in the Bill now to treat to those and similar issues?

**Ms. SHAWN RAINE BELLE:** Yes, Madam Chairman. Just to make the observation that in those cases that would have triggered the child justice as well as the child protection legislation, in terms of the intersection. There are provisions for dealing with their return. Then there would have been provisions dealing with their necessary care and after-care, but it would, to my mind, have been more addressing child justice in context, if I understood the circumstances correctly. In terms of Child Protection Legislation, you would have seen it also provides that nexus where it would look like a conflict with the law but because of the circumstances then, we would be dealing with rooting under the Child Protection Legislation.

**Hon. C. A. LANE:** Madam Chairman, the issue for me was a lot more complicated because when the issue occurred, I was Acting Minister and I had reached out to the Director of the Child Care Board and she did not think she had the necessary power under the current Legislation and she flagged the fact that she did not think she had the power in the upcoming Legislation. Luckily for me, the substantive Minister returned and he had that headache to deal with and between him and the Attorney General going back and forth, they could not determine the issue. For instance, in terms of child justice they had not broken any law in particular. I was saying they needed care and protection but the Legislation within the clause that spoke to the power of the Director – I think the Senator and Comrade Prescod asked about this power – to say, “*We will put hands on these and put them in the right place.*” I did not think the Legislation gave them enough power to do that. I lost track of what happened from there; so I am wondering if they went back to your office and those things were inserted or strengthened or located because they may have been there and not picked up.

**Ms. SHAWN RAINE BELLE:** Madam Chairman, there was an examination that was conducted on the Legislation by the Solicitor General’s Chambers and it was determined that there were provisions there to deal with the circumstances. You would recall that there is a provision for the Director, if there is a need for child care and protection where there is a jeopardy, to intervene and deal with the situation. There was an examination by the Solicitor General’s Chambers to see whether the adequate protections were in place. This was done in relation to child protection as well as child justice.

**Madam CHAIRMAN:** Thank you, Ms. Belle. I know that is the shorter of the two Bills but we do have time that you can go through the Child Justice Bill. We may not get to the written submissions today, although one of them was very brief. I am a pusher so if we can, I would not mind if we get there as well.

**Mr. T. A. PRESCOD:** Madam Chairman, I would just like to ask Ms. Belle, if in making the assessment of the different provisions, did she identify any specific area that she considered to be overlapping or duplicating? We were saying earlier that we can take the two (2) Bills together, so there is a probability that there may be some issues that could appear to be an overlapping of the same points being made in one Bill. I do not know if you have seen that. It is a kind of embroidery that, to me, if you can help me to understand the design in the two pieces of legislation that is likely to be a little complicated, I would be glad if you could point it out.

**Ms. SHAWN RAINE BELLE:** Okay, Madam Chairman, you would have seen the highlighting of Clause 33 which speaks to the residential treatment care order and then it is being linked with Clause 14 of the Child Justice Bill. Now, the intersection of jurisdictions is seen where you have a situation, for instance, where certain behaviours would have been formally criminalised under the Reformatory Schools' Legislation, so there were things like wandering and being indigent and so on. They may be brought to the attention of the court.

The court then looks at the circumstances and determines, "*This kind of behaviour would not be criminal. That person would be in need of care and protection.*" You would re-route and take care of it under child protection. The other side is where the child is brought and they may be under the age of criminal responsibility, in which case they would be dealt with under child protection; recognising that their behaviours would be such that they would need some kind of residential supervisory care but they are not to be then treated as criminally responsible but that the focus would be on treatment.

As you can see, there is an intersection and because there was always an understanding that there would be this necessary interaction, there has been care taken to articulate the interplay. Even in the Bills referring to one another – because it is contemplated that they will be brought into operation, even though by Proclamation but basically at the same time – they will operate together to complement each other. The understanding is that there may be situations where it may look criminal but it is not and then the person needs to be dealt with in child protection or the situation may in fact be criminal and they need to be dealt with under the child justice route. In that way, there was always an understanding that there would be an intervention so any overlap would have been taken and considered and we made sure that each one is interacted in a very complementary way. Thank you.

**Mr. T. A. PRESCOD:** We would have had a discourse like this before when I dealt with the Vendors Act and any serious government that is looking at reform in the system would always take into consideration the points which you made; where under a different type of system before in a colonial environment, lots of things that might constitute either immorality or behaviour that does not mirror a criminal act, those people would have been taken into consideration. I am glad that you pointed out there that

where a situation appears to be criminal by some minds; it might be proven that it is not and therefore you seek to protect more so than to criminalise and penalise for the action itself. That is what I was talking about and you struck the nail on the head.

**Senator Dr. Rev. J. A. ROGERS:** Madam Chairman, just for a little clarity; I am going back to my original point. Could you just guide me through the nature in which a child can make a report for himself or herself? In addition to that, just linking to the previous comment, what if the child is lying? Does that then go over to the justice side? You see, I want to just make sure because a child in a situation like this, do they have to go to one of these persons that we have listed to tell them something is happening to me and I need you to report it for me? Or, do they have access to the authority to report it for themselves? Then, how is the parent protected, if the child just decides I think mommy and daddy are getting on my nerves like want to mess them up?

**Ms. SHAWN RAINE BELLE:** Madam Chairman, as I was pointing out before, Clause five (5) makes for a child to make the report and then specifically, under Clause 23, it gives the opportunity for a person to make their own report. In the investigation of the report, this would be in Part Three (3), there would be an opportunity for the Director in making their judgement that it may not be that the investigations are required. In Clause 30, the Director may decide against taking any action where he considers that the proper arrangements exist for the care and protection of the child and the circumstances which led to the investigation or assessment have been adequately addressed. Where the Director makes such a decision, they should record reasons for that decision. You would not then turn around and punish the child for that. It is a situation where what would happen then in the circumstances, this is where you would be invoking the expertise of the Director in devising a plan for how that child can be taken care of in the situation.

**Madam CHAIRMAN:** Does that satisfy you Senator Rogers?

**Senator Rev. Canon Dr. J. A. ROGERS:** Could you tell me where in Clause five (5) this child can make this... Sorry I am just trying to get this.

**Madam CHAIRMAN:** At the very end of Clause five (5).

**Ms. SHAWN RAINE BELLE:** Yes, Clause 5(2). Look at page 20. Madam Chairman, to also remind you that the fullness of certain of these types of areas; these nuances can be addressed in regulations as well and so there is scope for that.

**Madam CHAIRMAN:** We can then refer to the Child Justice Bill and go through it.

**Ms. SHAWN RAINE BELLE:** Thank you Madam Chairman, just to indicate, again I will be referring to an expanded explanatory memo that I can make available to the Commission and the appropriate time.

The Child Justice Bill makes provision for the reform of the criminal law applicable to children in conflict with the law and the repeal specifically of the Juvenile Offenders

Act, Cap. 138 and the Reformatory and Industrial Schools Act, Cap. 169.

The Child Justice Bill was being piloted by the Ministry of Home Affairs and Information. Parts two through to nine of the Bill were informed by reference to the OECS Model Child Justice Bill, which was endorsed by UNICEF; UN women and other reputable international agencies. This was submitted as a part of this situation analysis of the Juveniles Justice System by Consultant Jacqueline Sealy-Burke, who worked with the Ministry in relation to the analysis of the situation in Barbados and also informing some of the policy set out by the Ministry.

The salient features of the model Bill which were incorporated into the Child Justice Bill are set out follows. The model Bill was premised on core principles which clearly acknowledged that children by their very nature are to be treated differently from adults and should be afforded access to the criminal justice system that reflects that philosophy. Those core principles appear in Clause six (6) of the Child Justice Bill.

The model Bill established a new age of criminal responsibility which was set at 12 years old. Clause five of the Child Justice Bill does the same. Section seven of the Juvenile Offenders Act states the age of criminal responsibility was in fact at 11 years old. The model Bill established two new stages in the child justice legal process, mainly in the initial inquiry and an assessment before the commencement of formal court proceedings against the child.

The new features are geared at ensuring that wherever possible, children are diverted from formal court processes and addressed through diversion measures. It also facilitates the presentation of relevant information on the child and the circumstances of the alleged offence. The assessment is to be conducted by the Probation Department. Provisions for assessment are provided by part three of the Child Justice Bill. Parts four and five of the Child Justice Bill speak to securing attendance at initial inquiry and the conduct of the initial inquiry and the version respectively.

The model Bill creates three levels of diversion moving from level one to level three. Clause 36 of the Child Justice Bill provides for those three levels of diversion, moving from level one to three as well. The model Bill stipulated a number of child friendly measures that are observed and some special considerations are set out. This is that the child should be informed of his rights. Clauses 11, 13, 14 of Child Justice Bill recite the rights of the child in conflict with the law, which are set out as follows:

- *The right to be informed of the nature of the offence or alleged offences that have been committed.*
- *The right to seek the advice of an attorney.*
- *The right to have a parent or an appropriate adult present where he is to be questioned, interviewed or assessed*

*in respect of the offence or offences alleged to have been committed.*

- *The right to remain silent.*
- *The right to be informed of procedures to be followed pursuant to this Act and any other relevant enactment that is enforced.*

This reflects the reference to Article seven (7) of the United Nations Standard Minimum Rules for Administration of Juvenile Justice or the Beijing Rules. It also incorporates some elements of the United Kingdom (UK) Code of Practice for detention treatment and persons by police officers.

The model Bill also deals with the fact that the procedure should be conducted in a child friendly and informal manner. The child and the child's parents or an appropriate adult should be encouraged to have an inactive participation in proceedings. The wearing of leg irons is prohibited and use of handcuffs are only utilised when absolutely necessary. This is set out in Clause 43 of the Bill.

Court proceedings involving children should be addressed as expeditiously as possible with delays being avoided at all costs. No information should reveal the identity of the child. It should not be published. This is provided for in Clause 49 of the Child Justice Bill. The model Bill provided for significant sentencing options which were significantly increased and enhanced. They included many non-custodial or community based sentences. The concept of the restorative justice was introduced in the Child Justice Bill under the Community Based Sentences, Clause 53. Restorative Justice Sentences is also dealt with in Clause 54.

The model Bill prohibited life imprisonment and flogging. Clause 62 of the Child Justice Bill prohibits the imposition of the death penalty; life imprisonment; flogging and whipping. This complies with Article 37 of the United Nations Convention of the Rights of the Child which prohibits torture; cruel; inhumane; degrading treatment or punishment; capital punishment and life imprisonment without the possibility of release and protects children from being deprived of their liberty.

The incorporation of the aforementioned features creates a distinctive system of child justice with specific positive rather than punitive aims designed to protect the rights of a child who comes into conflict with the law and covering the treatment of the child from the moment the allegation is made, through investigation; apprehension; charge; the pre-trial period; trial and sentence.

Part 10 deals with the running of the Secure Residential Facilities and seeks to provide a legislative framework which would replace the Reformatory and Industrial Schools Act, Cap. 169.

This provides mainly for the designation, administration and operation of detention facilities for juveniles and is informed by the reference to the United Nations Rules for the Protection of Juveniles Deprived of



their Liberty and the Custody and Detention of Young Persons Act RSNB, 2011 of New Brunswick, Canada and the General Regulations for Custody, Detention of Young Persons Act New Brunswick Regulation 92-71 of New Brunswick, Canada.

Part 11 deals with re-integration which is a legislative framework designed to provide for early release of a child detained in a secure residential facility or in exceptional circumstances, in a prison. The framework is designed to assist a child in returning to society; family life education or employment after release. Part 11 was informed by reference to the United Nations Rules for Protection of Juveniles Deprived of their Liberty in Article 79 and the General Regulation for Custody Detention of Young Persons Act, New Brunswick Regulation 92-71 of New Brunswick, Canada.

We will go into the substantive provisions now but that was just an overview of the salient features of the Legislation. I do not know if there are any interventions at this point.

**Madam CHAIRMAN:** I see one from Senator Brathwaite.  
**Senator Dr. The Hon. C. W. DaC. BRATHWAITE:** Thank you very much, Madam Chairman. Looking at this Legislation, I might have overlooked something but I am not seeing it. We are dealing with young people; persons who are under 18 years old; who for whatever reasons have come into conflict with the law and certain actions have to be taken. On the other hand, given the fact that you are dealing with youth, I would have thought that there should be a substantial emphasis on education; training; skills development and opportunities for persons to be reintegrated into the society, once they have served their term for whatever criminal offence they have committed. After all, an 18-year-old is just at the beginning of life. I believe that the society should be sufficiently organised and equipped to provide the necessary training facilities; improvement in skills for persons of that age to be reintegrated into the society. I see no provision here for those facilities. I wonder whether in the drafting of this Legislation and the proposals before us, whether these thoughts have been taken into consideration.

**Ms. SHAWN RAINE BELLE:** There is a whole part, Part 11, which deals with reintegration that is speaking to the early release of a child detained from the secure facility or prison. There are parameters which even deal with the continued education of the persons, so that will be dealt with in the Part II. There should also be recognition in, for instance, that deals with the Secure Residential Facility itself, where the Director of the residential facility would be required to conduct certain programmes with an educational base. Those would be spoken to when we get to that part of the Bill.

In terms of the sentencing options, as articulated earlier in my introductory remarks, there is a place for diversion which would be Level 1; Level 2 and Level 3 options which contemplate that level of education and guidance in relation to a child who is in conflict with the law. It is just a matter of getting to those provisions. We just did an

introduction to what the larger scope of the Act deals with. Thank you.

**Senator Rev. Canon Dr. J. A. ROGERS:** In case I miss it when I get there, under Part 10, Section 68, do we have to use the term "imprisonment"? It is Clause 68 (a)(iv). Can it be a term of detention rather than imprisonment? It is under Part 10, Secure Residential Facility, Clause 68 (a)(iv). It states,

*"reception and rehabilitation of a child who has been sentenced to a term of imprisonment under this Act;"*

**Ms. SHAWN RAINE BELLE:** Yes. You can deal with detention. Now, there are exceptional circumstances where a child may be confined to a prison and those are for the very serious offences under the Third Schedule. In this context, yes, I would agree that the language should be softened to detainment. Yes, I can revisit to deal with that. It should be noted then in terms of an intervention to change the language.

Thank you.

**Madam CHAIRMAN:** Honourable Corey Lane and then Senator Brathwaite.

**Hon. C. A. LAYNE:** I wanted to touch on something that Senator Brathwaite just asked actually in terms of the reintegration and highlight to the Committee to be reminded and underscore that the Bill actually goes even further than that. In Clause 34, it speaks about the diversion. Even before you get into reintegrate, you are looking at diverting and putting you into programmes; that actually helps. In Clause 54, it speaks about Restorative Justice which is a principle and pillar of reintegration because when you can make amends; the society is able. Those were intentionally written and I wanted to link it to the question that you had asked to add to what Miss Belle spoke to. Thank you.

**Madam CHAIRMAN:** Senator Brathwaite.

**Senator Dr. the Hon. C. W. DaC. BRATHWAITE:** Thank you, Madam Chairman. While I understand the explanation that has been presented with respect to reintegration, I still find it a little vague as to what is generally intended. In 104 (2) it said notwithstanding the generalities of Sub-section 1, a reintegration order may include the following terms and conditions. I do not believe that we must see this as an option. I think it should be almost compulsory that those who are for whatever reason fall afoul of the law, under this Legislation, should have the opportunity to be educated; to be provided with skills, so that they can be better citizens when they leave whatever institution is set up for them to spend time for whatever criminal offence has been committed.

To the extent that, and I say this without verification, that I understand that it cost \$31,000 a year to keep a prisoner in jail in this country and that is an expensive cost to the taxpayer. We would wish that these young people do not remain in jail or any other detention centre and that we give them the appropriate skills and capacity to be reintegrated into the society and to be

productive citizens.

I see the need for a specific mechanism that is not a 'may or maybe' or 'could be considered' but a specific mechanism, that allows for these young people who have for whatever reason, fallen into this situation to be given the opportunity to improve their skills; to learn new skills; to be educated; to be transformed; reintegrated and to become useful citizens to the society and not be a continuous cost to the taxpayer because if they are considered criminals at 18 and we do nothing; they will probably be criminals for the rest of their lives at a cost to the taxpayer and a cost to the society. I think that these young people need to be treated even differently from the hardened criminals of our country and to be given the opportunity to learn; improve and to be useful citizens to the country. Those are my comments.

**Ms. SHAWN RAINE BELLE:** Madam Chairman, just to understand the context of the Reintegration Order. That is basically in the context of early release so that is actually the after-care, having spent their time in a secure residential facility. In the context of the secure residential facility, the Director shall under Clause 78 establish and operate the following programmes:

- (a) *a curriculum appropriate to the needs of each child in accordance with the provisions of the Education Act, Cap. 41;*
- (b) *voluntary recreational programmes that are appropriate for children;*
- (c) *voluntary social and entertainment programmes that are appropriate for children;*
- (d) *voluntary religious services;*
- (e) *counselling programmes;*
- (f) *medical and dental treatment programmes;*
- (g) *visiting programmes; and*
- (h) *compulsory or voluntary work programmes.*

Within that specific sphere, there is a provision for the education and guidance of children. We also have to remember that there will also be further development of those programmes, under the auspices of regulations that is contemplated will be made by the Minister in relation to the running of the Secure Residential Facility or in their appropriate situation. The thing is that that is contemplated already. Also within the context of the reintegration, there is a special provision that I will direct your attention to. The Reintegration Continuing Education Order in Clause 108.

Now, this is a special one that contemplates the aging of the child into adulthood but then you provide the order to provide support for that person if they are pursuing a line of study. That also provides for educational support and as I said in relation to the diversion options that are spoken to earlier in the Bill, those contemplate educational opportunities as well.

You need to understand that the undergirding of education within the various spheres dealing with sentencing; detention; reintegration upon release back into the society; all of those things contemplate the incorporation of education as well. Thank you.

**Madam CHAIRMAN:** Deputy Chair, followed by Mr. Prescod.

**Senator J. A. KING:** Thank you. Senator Brathwaite if I may again. One of the misconceptions that the Barbadian public has had for a very long time is that when children go into facilities such as Government Industrial School (GIS), that they are going into a small prison. It is not a prison. It actually does not fall underneath Home Affairs. It falls under the Ministry of Education. It is a school.

Everything that they would have been doing in school, is done in the facility and more; in terms of the expansion with tailoring and a lot of the other things. I just wanted to put that on the table so that you understand that the facilities within which they are going, even though we are upgrading them; already the Legislation under the, I think it was the Education Act, they have to have education. Once they are going into the facilities. That does not change so you do not have to fear about that.

I think where a lot of the confusion comes is that there has been in the past, a lot of conversation about persons who were in GIS and then ended up going to prison. I have been beating this for God knows how many years. Until we begin to put into place that work goes on within the households and the environments within which these children come out of; you are going to have that sort of a problem on your hands over and over. I will give you a classic example. You work with a child, for back in those days, three to five years. Now, they come to you at probably 11, so they have had 11 years of a certain way of understanding life; behaviour and whatever else. You are given five years at maximum to change that but even in the process you make some sort of progress in getting them to change to a certain way; nothing has been done in the environment from which they have to go back to and when I was the Welfare Officer, I saw it for myself.

Where you go into the house two years later just checking on what is happening and you have parents within the household, who want them out for simple things like this person now is able to say, "Good morning", "thank you" and "please" and the rebuttals such as "so you think you better than everybody else inside here now?" and problems start.

They have to revert to what they know within that setting in three weeks. It is not as easy as what the public out there believes that it is. If we had half-way houses, so to speak, where they have the opportunity to say you leave to go into that environment and still have some time away to have work done where you originally came from, that may, I am not saying it is an answer but it may have been a help, but we presently do not have that. I just wanted to give you some context as to what it is.

**Senator Dr. the Hon. C. W. DaC. BRATHWAITE:** Thank you.

**Mr. T. A. PRESCOD:** This word "re-integration" has limitations on it. We are talking re-integrating people but once you are 'up', you learn skills. I believe that the State has a responsibility in an environment like this in the post-incarceration period. I do not want to say 'victim' but the young man or young woman who comes back out into society still has to face stigmatisation and this re-integration faces the encumbrance of society not willing to allow the re-integration to go as far as for this man to be able to apply for a job and move freely into the job, without having to face the challenges of the public and the State to some extent; still continuing with the police record of character.

There is no real full-fledged integration into the system. You might be able to educate the general public, provide skills but most of the people that I know who went to prison and received skills in prison came out as good carpenters; good electricians; good artists and people do not want to pay them for their paintings and sometimes if they hear you learned the art in prison, they are reluctant in even buying the painting.

I personally came in contact with a man and he wanted about \$3 000 for a painting and I was still wondering if he painted it or if he stole it. I am saying that the State has to set a trend where it has to encourage other people, especially the private sector people or have an agency or a few agencies, that when these fellows come back out at a very early age, they know they can be fully integrated into the society because they can get into the job market.

Right now they stop outside of the job market; they make every effort to do what is required of them to be perceived as an ordinary citizen. You can get the re-integration into the family, that is likely to happen in some cases but very few and they could get the re-integration into the socialisation; the environment in which you were brought up in. They do not get the socialisation or the opportunity to go into the workforce. This is reform but for me, reform has to be radicalised because this is the kind of environment that we are living in now in this society.

We have a lot of recidivism in the system. Too many people going back to prison; sometimes they cannot even get a job at the Ministry of Transport, Works and Water Resources (MTW) with a weed whacker because (they need) this special certificate to return to the workforce. Nobody wants to accept you to cut grass unless you have been expunged and the Government will be filibustering in this for a considerable time. I do not know. You cannot put it into legislation but I still believe it is a consideration; think about it and see how we can make provision because we are trying to build a better society than the one that we inherited; the one that we live in today. I think that we need to spend some time doing something that is really radically transformative in the system itself.

**Madam CHAIRMAN:** Thank you. Ms. Belle you may proceed.

**Ms. SHAWN RAINE BELLE:** Madam Chairman, conscious of the time and if I go on now, the Bill has 114

provisions with six (6) Schedules. The thing is whether you want to complete the Clause by Clause or whether you wanted to raise specific points. I am just conscious of the time.

**Madam CHAIRMAN:** Yes, conscious of the time you may summarise parts. What we can do at the start of the next meeting as Committee members would have become then more familiar following your broad introduction, would be to raise any and allow maybe a half of an hour for any specific questions to be raised before we start getting into the written submissions; so just broadly in parts.

**Ms. SHAWN RAINE BELLE:** Madam Chairman, in the preliminary remarks I would have given the incorporation of the specific parts that needed to be focused on so, in terms of the Clause by Clause, I just wanted to know whether you still wanted to do that.

**Madam CHAIRMAN:** Not at this time because lunch is available for us. Lunch is downstairs but not about lunch as much that we really need a hard stop because some of us have another meeting. What I would want to encourage us to do is that we are able to start the sessions promptly so that we can take full advantage of the time. There will be some sessions that we contemplate, especially when we get into the oral submissions, that we may consider an entire day and you will be notified accordingly. What I would encourage as well is that we take time to go through the written submissions. Senator Dr. Brathwaite, you will get your request granted to you. I think that we will be notified when we would have the opportunity for the written submissions. That would be coordinated for our next meeting.

I would be very happy for the next meeting to be a hybrid meeting. Some Committee members are here today on vacation and so on. It may help them not to have to come out from their houses to come to the meeting but all of us are committed to undertaking the work and for next meeting as well.

Since there are about 10 written submissions up to now, I think that the next meeting can contemplate half of those and see how far we get with it because the submissions, for instance, the two that were on the agenda for today; three (3) or four (4) pages but really essentially one point being raised. The length of the submission has nothing to do with the length of time we may be considering it.

When I say five or six written submissions to be considered; it is not necessarily that the Chairman is a slave driver but it is just that reading through them, I think that we can analyse and get through them fairly efficiently and effectively on time and with substance.

Deputy Clerk, are there any announcements?

**Madam DEPUTY CLERK:** We can discuss Any Other Business.

**Madam CHAIRMAN:** So we move on to Any Other Business. There being none, then we adjourn this first session. I want to thank you for your very constructive and useful questions and comments. Thank you, Ms. Belle.

This is an adjournment for you to catch yourself.  
A motion for us to adjourn until Friday, 8 September, 2023 at 10:00 a.m. This would be two weeks from now.

**Hon. C. A. LANE:** Madam Chairman, I beg to move that we adjourn until Friday, 8 September, 2023 at 10:00 a.m.

**Senator J. A. KING:** I beg to second that, Madam Chairman.

**Madam CHAIRMAN:** The date for our hybrid meeting is Friday, 8 September, 2023 at 10:00 a.m.

See you then when we will have Ms. Belle continue on the Child Justice Bill and then we anticipate that we should be able to consider at least five of the written submissions.

*Asides.*

**Madam CHAIRMAN:** Let us remember that the quorum to start is four (4), so that 10:00 a.m. start depends on all of us. Thank you. This meeting stands adjourned.

*MADAM CHAIRMAN adjourned the meeting until Friday, September 8, 2023, at 10:00 a.m. accordingly.*

**SECOND MEETING OF THE JOINT SELECT COMMITTEE (STANDING)  
ON SOCIAL SECTOR AND THE ENVIRONMENT  
ON THE  
CHILD PROTECTION AND CHILD JUSTICE BILLS, 2023  
HELD IN THE SENATE CHAMBER, PARLIAMENT BUILDINGS  
TRAFALGAR STREET, BRIDGETOWN**

**FRIDAY, SEPTEMBER 8, 2023**

**FIRST SESSION 2022-2027**

**IN ATTENDANCE**

**Ms. TONI N. S-A. MOORE, J.P., M.P. (Chairman)**  
**Senator JOHN A. KING (Deputy Chairman)**  
**Miss CYNTHIA Y. FORDE, J.P., M.P. (online)**  
**Hon. COREY A. LANE, J.P., M.P.**  
**Senator Dr. the Hon. CHELSTON W. DaC. BRATHWAITE, Ph.D.**

**ABSENT**

**Mr. TREVOR A. PRESCOD, J.P., M.P.**  
**Senator Rev. Canon Dr. JOHN A. ROGERS, B.Sc., B.A. (Hons), M.Phil, D.Th.**

**ALSO IN ATTENDANCE:**

**Ms. Beverley S. GIBBONS (Deputy Clerk of Parliament)**  
**Mr. Nigel R. JONES (Deputy Clerk of Parliament)**  
**Ms. Shawn Raine BELLE (Chief Parliamentary Counsel (Ag.))**  
**Ms. Suzanne HAMBLIN, (Library Assistant) (Journal Department)**  
**Miss J'anne C. GREENIDGE, (Typist) (Journal Department)**

*The Hybrid Meeting commenced at 10:00 a.m.*

**Madam CHAIRMAN:** This meeting is called to order. At this time, I would want to welcome all Members and those attending this Second Meeting of the Joint Select Committee on Social Sector and the Environment. We have a very intense Agenda ahead of us this morning and I take this opportunity not only to welcome those of us here but those online. I recognise Member of Parliament Miss Cynthia Forde, who is also online. I think that we can begin. At the end of the last meeting, we had agreed that we would commence this particular proceeding with continued explanations as it related to the Child Justice Bill.

**MINUTES**

**Madam Chairman:** Before we get into that explanation, I would want us to confirm the Minutes of the meeting that was held two weeks ago, on Friday, 25 August, 2023. I am wondering if we can take these Minutes as read.

**Senator J. A. KING:** I beg to move that the Minutes of 25 August, 2023, be taken as read.

**Miss C. Y. FORDE:** I beg to second that, Madam Chairman.

**MATTERS ARISING FROM THE MINUTES**

**Madam CHAIRMAN:** I would like to propose a Motion for the confirmation of the Minutes of 25 August, 2023.

**Senator J. A. KING:** I beg to move that the Minutes be confirmed, Madam Chairman.

**Senator Dr. the Hon. C. W. DaC. BRATHWAITE:** I beg to second that, Madam Chairman.

**Madam CHAIRMAN:** The Minutes having been confirmed, we can proceed smoothly into the next item on the Agenda; the continuation of the explanation of the Child Justice Bill. We had started that at the last meeting and at this point I would wish to turn over to Ms. Belle for the continuation.

**Ms. SHAWN RAINE BELLE:** Good morning, Madam Chairman. Good morning to all. I will just begin in the substantive parts of the Bill, having gone over the preambular explanation in our last meeting. We start with **Part I Preliminary and Clause 1 which states the Short Title.**

Clause 2 provides the Definitions which aid in the interpretation and understanding of the Bill and it should be noted that the word "child" is defined as a person under the age of 18 which is in line with the United Nations Convention on the Rights of the Child. Clause 3 provides for the Purpose of the Bill. This Clause seeks to ensure the compliance with the child-focused international norms currently regulating the field of child justice which are



contained in the following instruments: The UN Convention on the Rights of the Child; the UN Standard of Minimum Rules for the Administration of Justice 1985 or the Beijing Rules; the UN Rules for the Protection of Juveniles Deprived of Their Liberty and the UN Guidelines for the Prevention of Juvenile Delinquency.

The primary instrument guiding the development of juvenile justice in terms of the norms of the UN Convention on the Rights of the Child is seen as the overarching framework for the child rights approach. It contains an elaborate set of guidelines for maintaining human rights standards in juvenile justice systems and for the administration of juvenile justice itself.

In particular, Article 40 of the UN Convention on the Rights of the Child has established that the following core guiding principle for the treatment of children in conflict states: Parties recognise the right of every child alleged as accused of or recognised as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth which enforces the child's respect for human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

The last mentioned instruments do have the same status as the UN Convention. They are regarded as guidelines and they are internationally accepted minimum standards to which the states have regard when setting up or amending their existing child justice systems; setting policies and drafting legislation which incorporates the minimum standards and which assist states in complying with the obligations imposed by the Convention on the Rights of the Child.

**Part II: Application and Criminal Responsibility.**

Clause 4 makes provision for the scope of the application of the Bill. Clause 5 states that a child under the age of 12 is not capable of committing a criminal offence. Article 40 of the UN Convention on the Rights of the Child states that the state is required to establish a minimum age and the age as agreed by the Cabinet of Barbados was 12 years, as the age of responsibility.

Clause 6 sets out the principles to be applied when dealing with a child pursuant to the functions to be performed pursuant to the legislation.

**Then we go on to Part III: Assessment of a Child.**

Clause 7 sets out the procedure to be followed where a police officer encounters a child that has come into conflict with the law.

Clause 8 sets out the procedure to be followed by a probation officer in assessment of a child after that child has been apprehended by a police officer under Clause 6.

Clause 9 states the persons who shall or may attend an assessment.

Clause 10 states the powers and duties of a probation officer prior to assessment.

Clause 11 states the powers and duties of a probation

officer at assessment.

**Part IV: Securing the Attendance of a Child at an Initial Inquiry.**

Clause 12 states the methods of the securing of the attendance of a child at an initial inquiry.

Clause 13 makes provision for the issue of a summons in relation to attendance at the initial inquiry.

Clause 14 makes provision for the issue of a notice in relation to attendance at the initial inquiry. This inquiry process is to facilitate the magistrate making certain assessments about how the child should be treated.

Clause 15 makes provision for the procedure applicable where a police officer is uncertain of the age of a person suspected to have committed an offence, especially where that person is suspected to be a child.

Clause 16 sets out the procedure for the release of the child into the care of a parent or appropriate adult before the initial inquiry.

Clause 17 grants the Director of Public Prosecutions the power to authorise the release of a child into the care of a parent or appropriate adult before the initial inquiry.

Clause 18 sets out the duties of the police officer and the person into whose care a child is to be released pursuant to Clauses 16 and 17.

Clause 19 sets out the procedure for the release of a child on recognisance prior to initial inquiry.

Clause 20 states that a police officer shall not release a child accused of an offence, referred to in the Third Schedule. The Third Schedule sets out what you will see as the most serious offences.

Clause 21 states that a child shall not be released pursuant to Clause 20 and shall be detained in a secure residential facility as defined by Clause two (2).

Clause 22 sets out the procedure to be followed, where a child is injured or becomes ill or dies in police custody.

Clause 23 imposes an obligation on a police officer in charge of a police station to keep a register of children who are to attend an initial inquiry.

**Part V: Initial Inquiry and Diversion.**

Clause 24 states the nature and objectives of an initial inquiry.

Clause 25 identifies the persons who must and may attend an initial inquiry.

Clause 26 sets out the procedure for conducting an initial inquiry.

Clause 27 states the powers and duties of a magistrate with respect to an initial inquiry.

Clause 28 makes it an offence for persons who fail to attend an initial inquiry where directed to do so.

Clause 29 makes provision for the release of a child in the care of a parent or appropriate adult; where the initial inquiry is not disposed of at the first appearance of a

child before a magistrate and it is in the interest of justice to do so.

Clause 30 states the circumstances for detaining a child in secure residential facility after the first appearance of the child before a magistrate at the initial inquiry.

Clause 31 states the circumstances for postponing an initial inquiry.

Clause 32 states the circumstances for postponing an initial inquiry for a more detailed assessment.

Clause 33 states the circumstances for making a decision to divert a matter.

Clause 34 states the purposes for the diversion, so these are the options that can be taken in relation to diverting the child away from the traditional criminal system.

Clause 35 states the circumstances of a child's eligibility for diversion.

Clause 36 identifies the levels of diversion options.

Clause 37 states the minimum standards applicable to diversion and diversion options.

Clause 38 states the circumstances for the breach of a diversion option.

Clause 39 empowers the Minister to make regulations to develop suitable diversion options.

Clause 40 makes provision for a magistrate to stop proceedings at an initial inquiry and to address the matter as if it were commenced under the Child Protection Bill.

There are circumstances where the child may present in Court, but the circumstances attending to their reasons for being there are not really offences but matters that concern their welfare, in which case, there is capacity under this proposed legislation to switch to the child being dealt with under the Child Protection Legislation rather than the Child Justice Legislation.

Clause 41 makes provision for the referral of matters for trial and detention pending trial.

#### **Part VI: Court Proceedings.**

Clause 42 makes provision for the conduct of proceedings in relation to a child in Court.

Clause 43 states the standards applicable to the treatment of a child in Court.

Clause 44 states that the responsibility of a child shall be proved by the prosecution beyond reasonable doubt.

Clause 45 sets out the standards applicable for separation and joinder of trials involving a child and an adult.

Clause 46 sets the time limits relating to the conclusion of trials.

Clause 47 states the Court may make an order for diversion where a child acknowledges responsibility for an alleged offence.

Clause 48 states that the persons who may be allowed to attend Court proceedings involving a child.

Clause 49 prohibits the publication of information in proceedings relating to a child which reveals the identity of the child or witness appearing in such proceedings.

#### **Part VII: Sentencing of a Child.**

Clause 50 states that the Court may impose a sentence on a child that has been found guilty of committing an offence.

Clause 51 makes provision for the preparation of a presentence report by the probation officer in relation to a child found guilty of committing an offence.

Clause 52 identifies the purposes of sentencing a child found guilty of committing an offence.

Clause 53 cause the Court to impose a community-based sentence and a community-based sentence is defined in Clause two (2).

Clause 54 gives the Court the power to impose a restorative justice, which again is defined.

Clause 55 empowers the Court to order a child to appear for a family group conference pursuant to a grant of a restorative justice order under Clause 54. This is a situation where the family group can be brought in as a part of the rehabilitation but also part of the accountability in the context.

Clause 56 empowers the Court to impose a sentence of correctional supervision for a period not exceeding three (3) years.

Clause 57 empowers the Court to impose a sentence involving a compulsory residential requirement in a secure residential facility and that will be dealt with in another part later, subject to Clause 58, or prison, subject to Clause 59. This is where the child commits the most serious offences.

Clause 58 makes provision for the procedure for imposing a sentence for a child to be detained in a secure residential facility.

Clause 59 makes provision for the procedure for imposing a sentence to be detained in prison.

Clause 60 makes provision for the postponement or suspension of the passing of a sentence.

Clause 61 imposes a penalty in lieu of a fine or imprisonment.

Clause 62 specifically prohibits the imposition of the sentence of death; life imprisonment; flogging or whipping.

Clause 63 grants the power to give notice through cause by a parent, child or an appropriate adult should not take compensation. This is especially the case where damage has been done to property.

Clause 64 makes provision for proceedings to show cause as to why a parent or an appropriate adult should not pay compensation. That is related to Clause 63.

#### **Part VIII: Legal Representation.**

Clause 65 states that the child shall be provided with legal representation by the Government at all stages of an administrative or criminal proceedings.

Clause 66 sets out the standards to be complied

with by an attorney-at-law in all stages of the administrative and criminal proceedings.

**Part IX: General Provisions as to Proceedings in Court.**

Clause 67 makes provision for the extension of power to make depositions.

**Part X: Secure Residential Facility.** This is where a child will be detained in the circumstances as are articulated by the Act.

Clause 68 provides for the definition of a secure residential facility.

Clause 69 gives power to the Minister to make an order to designate or cause lands or buildings designated as a secure residential facility.

Clause 70 makes provision for the Government Industrial School (GIS) to be considered as a secure residential facility.

Clause 71 states grounds for detention in a secure residential facility.

Clause 72 makes provision for the appointment of the Child Justice Board. The Child Justice Board is set out in the Fourth Schedule.

Clause 73 states the functions of the Child Justice Board in having responsibility for setting policy of the secure residential facility and giving directions to a Director of a secure residential facility.

Clause 74 makes provision for the appointment of a Director of a secure residential facility.

Clause 75 makes provision for the appointment of staff of a secure residential facility in accordance with the Public Service Act, Cap 29.

Clause 76 recognises that certain officers will be vested with the powers under the Police Act – Clause 67, in order to convey a child to or from a secure residential facility or to return a child to a residential secure facility, where the child has escaped that facility or refuses to return.

Clause 77 imposes an obligation on the Director of a secure residential facility to maintain records relating to a child detained in such a facility.

Clause 78 empowers the Director of a secure residential facility to create programmes appropriate for the child and who is detained in that facility.

Clause 79 makes provision for a child detained in a secure residential facility to receive medical or psychiatric treatment.

Clause 80 makes provision for a Director to apply to the court for an order to transfer a child from one secure residential facility to another.

Clause 81 empowers the Director of the secure residential facility to declare a situation to be an emergency whether there is an occurrence of fire; riot or disturbance; contagious disease or a natural disaster.

Clause 82 sets the procedure for the notification of a parent or an appropriate adult irrespective of a child and the coroner and the Police Service in relation to death, injury

or serious illness of a child detained in a secured residential facility.

Clause 83 states that the resources of the secure residential facility shall be in such monies as Parliament may provide for the purpose of operating that facility.

Clause 84 imposes on a child detained in a secure residential facility, the responsibility to comply with the rules and conduct and discipline as set out in the legislation and to participate in programmes devised by the Director.

Clause 85 states the conduct that are considered to be infractions if committed by the child detained in the secure residential facility.

Clause 86 states the conduct that would be considered acts of misconduct if committed by a child detained in a secure residential facility.

Clause 87 states the power of the Director to impose discipline on a child detained in secure residential facility, where the child has committed an infraction or an act of misconduct. It should be noted that certain forms of punishment are prohibited. Those being corporal punishment or severe or frightening measures.

Clause 88 sets out the procedure to be followed in the conduct of searches in relation to a child detained in a secure residential facility.

Clause 89 sets out the mechanisms to be used to maintain order in a secure residential facility.

Clause 90 establishes the grievance procedure to be followed where a child is detained in a secure residential facility and is believed to have been treated unreasonably; unjustly; oppressively; improperly; arbitrarily; unfairly; unduly harsh or inappropriate or/and in a discriminatory manner.

Clause 91 sets out the procedures to be followed in the discharge of a child from a secure residential facility.

Clause 92 empowers the Minister to approve the discharge of a child from a secure residential facility in certain circumstances.

Clause 93 makes provision for persons aggrieved by decisions made under Part X, to appeal to a judge in Chambers.

**Part XI: Reintegration.**

Clause 94 establishes a board to be known as a Reintegration Board and the constitution of which is addressed in the Fifth (5<sup>th</sup>) Schedule. This board is responsible really as set out in Clause 95 to consider whether a child detained in a secure residential facility or prison, may be given early release.

Clause 96 states the members of a Reintegration Board shall be paid such remuneration as the Minister determines.

Clause 97 states Reintegration Board may appoint and employ such officers as required on the terms and conditions it thinks fit.

Clause 98 states the expenses of the Reintegration Board will be defrayed out of monies voted for the purpose by Parliament.



Clause 99 imposes a duty of confidentiality on the Reintegration Board or any person concerned with the Board.

Clause 100 makes provision for the protection of Members of the Board on a *bona fide* exercise of their duties and functions under the Legislation.

Clause 101 states the parameters for eligibility for a grant of a Reintegration Order and that is the Order that will facilitate the early release.

Clause 102 sets out the procedure for it to be followed in application for a Reintegration Order.

Clause 103 states the procedures to be followed for the grant of the Order.

Clause 104 makes provision for the content of a Reintegration Order.

Clause 105 states the conditions that has to be met for revocation or suspension of a Reintegration Order.

Clause 106 provides the conditions for forfeiture of reintegration.

Clause 107 sets out the procedure to be followed in the reapplication for a Reintegration Order.

Clause 108 empowers the Reintegration Board to make a Reintegration Continuing Education Order. These are the circumstances where the child is about to transition into adulthood but they want to continue their education, so an Order is made to facilitate this matter and this helps them in the reintegration back into society.

#### **Part XII: Miscellaneous.**

Clause 109 gives the power of the Minister to make regulations generally to give effect to the Act.

Clause 110 gives the Minister the power to amend by Order the First, Second, Third, Fourth and Fifth Schedules.

Clause 111 is a transitional provision which makes provision for the continuation of actions first started and initiated under the Juvenile Offenders Act to be dealt with tried and determined in accordance with the proposed legislation and the imposition of penalties to be administered in accordance with the proposed legislation so that everybody would be treated equally under the new regime.

Clause 112 states the consequential Amendments required to be done to other enactments to facilitate the operation of proposed legislation and these shall be addressing the matter as set out in the Sixth Schedule; so you will see a number of enactments listed and then the ways in which those enactments were amended in order to facilitate the operation of the proposed legislation.

Clause 113 states that Juvenile Offenders Act, Cap. 138 and the Reformatory and Industrial Schools Act, Cap. 169 are repealed.

It should be noted that the subsidiary legislation read under those Acts should be revoked upon repeal of the said pieces of legislation which mostly they do.

Clause 114 states the Child Justice Act, 2023 shall come into operation on a date fixed by proclamation.

Madam Chairman, then there are the Schedules.

The First Schedule deals with the list of offences that are connected to some of the Clauses in the Bill: Clauses 7, 16, 14, 51 and 59.

In the Second Schedule there is a list of offences addressed: Clauses 16, 19, 41 and 59.

In the Third Schedule the list of offences addressed: Clauses 19, 20, 29, 30, 46 and 59 and these are the list of the most serious offences where the tension in a prison is possible.

The Fourth Schedule deals with the constitution procedure of the Child Justice Board and the Fifth Schedule deals with constitution and procedure of the Reintegration Board and as we just talked about, the Sixth Schedule deals with the Consequential Amendments to certain amendments enactments as previously described.

Madam Chairman, this is a summary of the provisions that appear in the legislation. Any questions I will welcome.

**Madam CHAIRMAN:** Thank you, Ms. Belle for providing us with a summary. I am sure that as we continue through our meetings, that there will be opportunity for us to have further insight as to how the relevant sections are being addressed. At this time, I will open up to members of the Committee, if there are any questions for Ms. Belle, before we get into the examination of the written submissions. Senator Dr. Brathwaite.

**Senator Dr. the Hon. C. W. DaC. BRATHWAITE:** Madam Chairman, I would like to thank Ms. Belle for her explanation as she went through what is, in fact, a very large and comprehensive document with a tremendous amount of detail which, I assume, is necessary especially in cases where you are dealing with children. In following her and in reading the document, I have three (3) questions which I would like to ask.

My first question relates to Part II, paragraph five (5), page 17, where the age of criminal responsibility the Clause says:

*"5. A child under the age of 12 years is not capable of committing a criminal offence."*

As a layman, I find it difficult to understand this. I am no lawyer. I have not been versed in legal instructions but how is it possible that a child under 12 years old is not capable, note the language, is not capable of committing a criminal offence. I need to understand this. I believe a child less than 12 years old can kill someone. If that happens, is the child not capable of committing a criminal offence? What does this mean? I do not quite understand it. As a layman, I do not understand this statement. That is my first comment.

Madam Chairman, my second comment relates to page 35, Section 25(1)(b) which says:

*"25.(1)(b) the parent of a child or an appropriate adult;"*

This has to do with attendance at an initial enquiry. I am concerned that in several places in the document, it seems to give the impression that the child only has one parent.

At no time, in my view, does it say, “the parents of the child” or “one of the parents of the child would attend or participate”. A child, in my understanding biologically has two parents. How is it possible that we are having legislation that only recognises one? That is my concern under Section 25(1)(b).

Madam Chairman, then going a little further on page 84, “Discharge of a child from a secure residential facility”.

It says in Section 91(1): “91.(1) The Director shall discharge a child from a secure residential facility where...” and it gives the conditions under which a Director may discharge a child from a residential facility and then in Section 92 it says:

*“The Minister may approve the discharge of a child from a secure residential facility on application made to him in writing where that child has served two-thirds of his sentence or term of the order or the custodial portion of the sentence ...”*

In other words, the Director has responsibility for the discharge of a child from a residential facility but then the law also says that the Minister may discharge the child. Does the Minister seek the approval of the Director or does the Director seek the approval of the Minister, for the discharge of a child from a residential facility? If not, in my opinion, there seems to be some conflict as to who can discharge a child from a residential facility. Is it the Director or is it the Minister and under what conditions can the Minister override the decision of the Director? How does this operate? I see, with all due respect, as a layman reading this; I see a conflict.

My last comment is not specifically in this particular section of the law but it has to do with the basic definition of who is a child; at what age does a child become a child or ceases to be a child because there are many references, that is, 14 years old; 16 years old and 18 years old. There seems to be some confusion as to when is a child a child. Those are my comments and I thank you very much for giving me the opportunity to comment.

**Madam CHAIRMAN:** Before I turn to Ms. Belle for a response to those areas of concern raised; I would wish to recognise the Honourable Corey Lane who has joined us online.

**Ms. SHAWN RAINE BELLE:** Madam Chairman, through you, just to respond to the concerns raised by the Senator.

We are going to start with Clause five (5), in relation to the age of criminal responsibility. This is a section that usually appears in Juvenile Justice or Child Justice Legislation. It appeared in the Juvenile Justice Act where the age of criminal responsibility is set at 11. Here, they are setting it at 12 and children under those ages, based on this proposed legislation, for the purposes of the law, are not supposed to be held responsible for their behaviour. What happens is that under the Child Protection Legislation then, they will be dealt with in a special way

because it is recognised that their behaviour would dictate that they are in need of care and protection and they would be put into a residential facility, so that then there is the overlap with the Child Protection Legislation because those particular children would not be seen as being accountable for the purposes of the law for the acts that they have committed.

**Madam CHAIRMAN:** Senator Brathwaite, does that satisfy you?

**Senator Dr. the Hon. C. W. DaC. BRATHWAITE:** Madam Chairman, I still have a problem because if that is case, it means that the person is not being held responsible for his or her actions or am I wrong?

**Madam CHAIRMAN:** You are hearing that the parent or someone else is responsible for a child 12 and under as opposed to the child.

**Ms. SHAWN RAINE BELLE:** Madam Chairman, so in the cases where there is damage to property and so on, that can attract liability and you would have seen that but in relation to dealing with the accountability for acts, children under a certain age do not possess the capacity because of the tenderness of the age, to be considered responsible for criminal purposes. As I said, it is a standard that is repeated in a number of pieces of child-related legislation. It is not an unusual provision and it actually re-enacts on what would have been the common law, so that is the situation. It would mean that, yes, in some circumstances if they did damage to property, the parents would be called upon to pay for those damages but it is not to say that they would not be held accountable; it is just that they would be classified in a different way, where they would be in need of care and protection. That is therefore dealt with under the Child Protection Legislation.

**Madam CHAIRMAN:** I think it begs the question because damage of property may be one thing but if there is damage to a limb or life, in cases of more serious offences, I think that is where Senator Brathwaite was directing his question regarding why the age 12.

**Ms. SHAWN RAINE BELLE:** In the law, the capacity to be held accountable is limited when you have children of a certain age. That is standard, that is in the law but that does not mean that then the legislation leaves it blank. It means that then they have to be treated in a different way, so then that is why the Child Protection Legislation would kick in. They would then be detained in a residential facility, not beyond three (3) years but there where their behaviour would be counselled and there would be rehabilitation. It is just that that is the position of the law.

**Madam CHAIRMAN:** I recognise Senator King.

**Senator J. A. KING:** Thank you, Madam Chairman. I do not know if I can help in this area but I think what is being put forward is that under the law, the ability of a child for consequential thinking is completely different because he or she is a child. Even if we go back to the Holy Bible – and I am sure Senator Brathwaite is a Bible person – it is noted that when as a child; you think as a child; you act as a child. I think it is built off that mindset that a child will

react to certain things without thinking consequentially of the ramifications of the actions at a particular time. I think based on that, is why most of these laws would have this type of approach, where you are dealing with children.

**Madam CHAIRMAN:** Without thinking through the actions or the ramifications of them. Okay, Senator Brathwaite and then I am recognising online Miss Forde, who wants to speak after Senator Brathwaite.

**Senator Dr. the Hon. C. W. DaC. BRATHWAITE:** Thank you kindly, Madam Chairman. I just would like to say that in my view, Clause five (5) should probably have an explanation; an addendum; a further comment with respect to if a child under 12 years old does A, B, C or D, then this is the procedure that will be followed. That is just from my own understanding of what is here but to say that a child cannot and is not capable, I think is really absolute.

**Madam CHAIRMAN:** Ms. Belle.

**Ms. SHAWN RAINE BELLE:** It is a restatement of the law as it always has been, so it is not an unusual statement. We even recognise the limited capacity of children to enter into contracts, for instance, so that contract would be rendered void. In the same way, when you have children under a certain age, you cannot because of the tenderness of their age and their lack of consideration or ability to appreciate the consequences of their behaviour, they would not be held liable because the law recognises the tenderness of the child and their lack of capacity to understand the consequences. Therefore, they are not held accountable under the law for that reason. I do not know if I can finish responding to the other questions.

**Madam CHAIRMAN:** Yes, but I think that Miss Forde wanted to come in on this particular one before we proceed. Miss Forde, I am recognising you. You have the Floor. Okay, Ms. Belle, you may proceed.

**Ms. SHAWN RAINE BELLE:** Madam Chairman, in relation to Clause 25 and 1(b), the parent of a child or an appropriate adult. It is important for persons to understand that there are certain conventions that apply to the drafting of legislation and one of the conventions is that a lot of the time, the legislation is drafted in the singular but it can contemplate numerals or multiples. It is not that the legislation is drafted to exclude a particular parent. It is just that it is a drafting convention and that is not unique to Barbados but it is a drafting convention that happens in several jurisdictions. I just wanted to point that out. Then, in relation to appropriate adult, I draw your attention to Clause two (2) which defines an appropriate adult as a member of a family of a child or a custodian or guardian of a child who has attained the age of 18 but excludes the parent of the child. One of the rights that is incorporated into the Bill is that a parent or an appropriate adult should be present at the stages within the context of the new child protection/justice system. That is why that provision appears. Thank you.

Madam Chairman, just in relation to Clause 91 sets out the stipulations where the Director would release the child. Then, there is the situation where the Minister may on

application to him and where the child has served up to two-thirds of his sentence or term order or custodial portion of the sentence made by the magistrate or the judge. This discretion is usually handed to the Minister in the sense of providing a circumstance or an exception; where there may be circumstances that may be different from the circumstances in Clause 91. It would give a discretion to the Minister to do the discharge.

For instance, if on application to him, there is a situation where the child is sick or there is some kind of problem, the Minister would look at the situation and look at the circumstances set out in Clause 92 and then make a determination, based on how the legislation empowers him to do so.

This type of provision does appear in legislation, so it is not unusual but if it is that there needs to be further clarification on the types of situations or scenarios, then I could take the point of saying maybe you can set them out. The truth is that you try to give as much flexibility as possible by not being specific, so that the Minister can have a certain discretion. Of course the check is that there is an application process and the child has served the two-thirds of his sentence. Those are the circumstances.

**Madam CHAIRMAN:** I recognise Senator King.

**Senator J. A. KING:** I think though I know where Senator Brathwaite is coming from and I too, have my reservations on it. Does this application come through the Director; the Board; a parent or can I, just a member of the public, make this application and then the Minister makes a decision, which has to be carried out? Now, if that is what it is implying, I would have some questions on the legitimacy of that. I think that is where we need to clarify.

**Madam CHAIRMAN:** That is where my thinking was as well. From the time I read Section 92, it was who has the authority to make the application to the Minister. Is it the residential head; the facility the person is at; the superintendent of prisons; the Director and is there still discussion? I am noting within Section 92, it is saying that the Minister may approve but then at Section 91, the Direction shall discharge. Where does the Minister approve? I do not see the conflict. What I see is some ambiguity and some clarity may be needed around Section 92.

**Ms. SHAWN RAINE BELLE:** Ms. Chairman, it is noted.

**Madam CHAIRMAN:** I recognise Senator Brathwaite.

**Senator Dr. the Hon. C. W. DaC. BRATHWAITE:** If I may, Madam Chairman, I think that Section 92 should at least have said, in consultation with the Director. After all the Director is in charge of the facility, so I do not perceive that the Minister could come, over the head of the Director and approve the discharge of a child from a facility where the Director is in charge. Therefore, I see a potential conflict. Those are my comments Madam Chairman.

**Ms. SHAWN RAINE BELLE:** The comments are taken. Of course we would have to then consult with the pilot Ministry in terms of the policy and where it should go from here. Thank you.

**Madam CHAIRMAN:** Thank you. Honourable Corey Lane. Are there any questions for Ms. Belle? Senator King?

**Senator J. A. KING:** Thank you Madam Chairman. At Section 86 under misconduct. It speaks heavily of the infractions, if I may use that term that a child may take. Forgive me if I missed it but it does not speak specifically to if a child in a secure facility injures; maims or God forbid, kills a member of the staff. In the environment that we are in and I can speak from my own experience, a lot of persons come into such facilities and are already exposed to so much violence, that it is completely different then, let us say, that what it would have been 20 to 25 years ago. The possibility for this to happen still exists within the facility and I am just curious as to how we would treat to that child and not only to the child itself but I always go back to this all the time. In some cases, we are seeing that the parents are applicable to pay compensation, in term of destroying the property but what happens in the case of loss of life. These are things that I think we need to think seriously about.

**Ms. SHAWN RAINE BELLE:** Madam Chairman, we speak to the power of the Director to impose discipline on a child in a facility. We also speak to the maintenance of order in the secure facility. We do not really speak to the compensation for injury, *et cetera*. Those are things that are not addressed. A note can be made in relation to addressing such matters.

**Madam CHAIRMAN:** Thank you Members of the Committee and thank you Ms. Belle for the responses. I think that that brings us to the moment in time, where we may be ready to examine the written submissions.

Before the Committee, we have 11 written submissions for examination. Two (2) submissions attributed to the same person. We have these submissions to go through. My proposal is that we should wish to conclude this session by 1:30 p.m. We have just about two hours that we may go through the submissions. There are some recurring themes and questions and it may be useful if we can look at them. Maybe once we have looked at one submission and have identified the issues and we see similar issues recurring in other submissions, then we can consider that we have already responded to those, so that in the interest of efficiency and effectiveness of the Committee's work, we can proceed smoothly.

From one of the submissions, I noticed that there is a request for an in person meeting, to respond more fully to questions that may arise out of the submissions. There is only one (1) of the written submissions where there will also be a follow up in person, of oral submissions as well. Taking the first submission before us therefore it comes from the Executive Director of Family Faith Freedom Barbados, under the signature of Mr. Hudson Inniss and

that is the first one we will go to. Do all Members of the Committee have this submission before them? Okay.

The submission that was presented by letter, dated 17 August, 2023, is before us. In the submission, there is particular concern with the Child Protection Act in section 3, where it states that:

*"The purpose if the Act shall be to ensure compliance with the UN; the United Nations Convention on the Rights of the Child; The Universal Declaration of Human Rights and all other international instruments to which Barbados is a party."*

The concern is similar as it relates to Child Justice Act in Section 3, where the Act seeks to ensure compliance with the same instruments and also the United Nations standard minimal rules for administration of Juvenile Justice the United Nations for the protection of juveniles deprived of their liberty and United Nations guidelines for the prevention of juvenile delinquency.

The further concern, having reference those two sections, Section 3 of both Bills the further concern is that the legislation would place on Barbados, the burden of ensuring compliance with the Provision of the Conventions, to the respective Acts, in the respective Acts and that these sections should therefore be removed as a precautionary measure because their inclusion commits the country to norms which may change to its detriment and beyond its control.

The Committee is asked to review this request, conscious of the fact that Barbados is already signatory to these instruments and the question before us will be whether or not removing the sections or including the sections, reduces in anyway the burden of obligation that Barbados would have.

**Ms. SHAWN RAINE BELLE:** Madam Chairman, just to indicate that Barbados signed on to the Convention on the Rights of a Child, 19 April, 1990 and ratified the Convention, 09 October 1990. The weight is that when a State ratifies one of the International Human Rights Treaties; it has the obligation, the legal obligation, to implement the rights recognised in that Treaty. Through ratification, the States undertake to take in to put in place domestic measures and legislation compatible with their Treaty obligations. Barbados, since the 1990s has committed to implementing the rights as recognised by the Treaty and the Bill is only a further recognition of that commitment.

It should be noted that if there are changes to such Treaties, Barbados reserves the right as a sovereign nation, to enter into reservations. A reservation is a declaration made by the State that it purports to exclude or alter the legal effect of specific provisions of a Treaty, in their application to the State. A reservation enables a State to accept the multi-lateral Treaty as a whole but given their possibility of not applying specific provisions, where it does not want to comply.

They are certain procedures that are set out for setting of reservations but the fact of the matter is that you can do that

at the signing ratification acceptance approval or accession and so, by that, if such changes happen then Barbados can make those reservations. I just put that on the table and if there is any type of change in protocol or something, Barbados can also not sign that part of the Convention. That is something that I just wanted to draw to persons' attention.

The only thing is that as you have the Vienna Convention on the interpretation of Treaties, usually you cannot enter a reservation that would go to undermining the Treaty or sometimes they are other types of reservation provides that you cannot depart from the provisions. That is not the case with the Convention on the Rights of a Child. It makes provision for States, under Article 51 to enter into reservations. At the time, Barbados did not have any reservations but if the Convention were to be changed in the way that would not be compatible with Barbados' goals or ambitions, *et cetera* then we can enter into reservation or we can simply not sign. Thank you.

**Madam CHAIRMAN:** Thank you for your explanation. The question before the Committee is whether with the explanation offered by Ms. Belle, we, the Committee, are satisfied that the central point which was raised in the submission, that the provisions made in Section 3 of both Bills, obligates Barbados to accept and include the provisions of all the UN and other instruments. The question is whether we are satisfied that the provisions for instance under the Rights of a Child at Article 51 as it relates to reservations; if that process sufficiently safeguards Barbados from accepting any future Amendments that we are not comfortable with, as a country. I noticed that in your response as well that reference was made to one of the instruments, the United Nations Convention on the Rights of a Child. Is the Committee to take it that there is similar provision in all the other instruments raised for reservations to be made?

**Ms. SHAWN RAINE BELLE:** So, in relation to the declaration; I will deal with the Child Protection Bill. In relation to the Human Rights declaration for instance, that is the document that overarches or informs the Child Convention; the Convention on the Rights of a Child and it reinforces it. It is a declaration that would have been supported by 193 States including Barbados but its execution is actually recognised in the Convention on the Rights of the Child so that is where the reservation then can operate.

In the Child Justice Bill, as I would have pointed out in my presentation, the latter guidelines are guidelines but for the purposes of the Cabinet of Barbados it was recognised that they set norms that are understood to be regulating the way that you treat children in conflict with the law especially where you are depriving them of their liberty, in consequence of their committing a crime and so these norms are set out in those guidelines so they exist in that way but again, like the United Nations (UN) Convention on the Rights of the Child, the execution then is in that Convention and then then the reservation exists. I do not know if it is helping.

It is almost like when you have the Constitutional right but it is self-executing so then you have an ordinary piece of legislation. In this way, the guidelines or the declaration exists but then the execution is through the Convention on the Rights of the Child (CRC) in which case then the reservation exists.

**Madam CHAIRMAN:** Okay. Senator Dr. Brathwaite.

**Senator Dr. the Hon. C. W. DaC. BRATHWAITE:** I would like to express my appreciation for the explanation that has been given by the Chief Parliamentary Counsel (CPC) with respect to this particular situation. In reading the presentation from this institution, Family, Faith, Freedom, it seems to me that there is a principle that we have to take into consideration and I think that principle relates exactly to what the Chief Parliamentary Counsel (CPC) is saying. Where you have agreed to a particular convention, does it mean that you automatically have to agree to amendments to that convention in the future? A country should have the right to agree or not agree, if the proposals are in conflict with their own national objectives. I think this should be clear because after all, the country is a sovereign country and if I agree to this convention today and then tomorrow you change it at the level of the United Nations (UN), I can decide whether or not I am in agreement.

Madam Chairman, the other thing which I think is important is to remember that we have representatives in the United Nations (UN) system, therefore, at the level of discussion of these Regulations in the United Nations (UN), our representatives would be there to look after the interest of Barbados and to determine whether the proposal that is being made is consistent with the national aspirations; the national regulations or national guidelines. I believe that we are safeguarded, if I may put it that way, by these mechanisms which would allow us to have information before approving any amendments that may be made to a Convention to which we previously agreed. That is my understanding, Madam Chairman. Thank you!

**Ms. SHAWN RAINE BELLE:** Madam Chairman, just to augment or to further give some reassurance. Even when Barbados is considering to be a party; the provisions then are usually required to be reviewed by the Solicitor General's Chambers and then they make a recommendation to the Cabinet of Barbados as to whether or not there are legal concerns or other concerns that may emerge. There are times where the opinion of the Chief Parliamentary Counsel (CPC) is requested but that would not generally be the case because the Solicitor General is the advisor to the Government. The Solicitor General then would give recommendations and the Cabinet of Barbados would then make a decision. Then there would be an instruction as to whether it should be signed or not. There are built-in mechanisms on a number of different levels in relation to whether Barbados becomes a party and the level of reservation or not in relation to international Treaties, so I just wanted to add that as well.

**Madam CHAIRMAN:** Thank you for that very full response. Are there any other questions arising out of this particular submission that would concern the Committee at this time?

I am not seeing an indication but with this particular submission as well, there is a request for a 10-minute presentation. Just the last paragraph in the reference: We trust that our submission will be given serious consideration and it has. We would also welcome the opportunity of a 10-minute presentation to the Committee and if this could be facilitated then the writers of the submission would also have the benefit of this wholesome explanation and there would be no requirement for us to write back a response.

If the Commission is in agreement, we can set a date and time for that presentation and for us to be able to examine further, this particular submission. Are all so agreed? Okay.

The decision is that we will set a date for an oral presentation by Family, Faith, Freedom Barbados at which time the Committee will have the opportunity for further engagement.

Before proceeding to the next submission, I just want to verify that there is consensus on the Committee as regards the response that was given by Ms. Belle; that they would therefore be no need to remove Section 3 from either the Child Protection Bill or the Child Justice Bill and this is just out of an abundance of caution.

**Senator J. A. KING:** Agreed.

**Senator Dr. the Hon. C. W. DaC. BRATHWAITE:** Agreed.

**Miss C. Y. FORDE:** Agreed, Madam Chairman.

**Madam CHAIRMAN:** Thanks, Miss Forde. Miss Forde is saying that she agrees. Honourable Corey Lane? Is he there? He is not there?

The next submission before us is that by Mr. Vincent Smith. This is a brief submission as well and the title of the submission is Gender Affirming Care is Medical Abuse. What this submission raises concern with, is that a change to the Bill is necessary because children are being led down a path of gender confusion and identity crisis which is exploited and monetized by medical professionals.

The submission defines gender affirming care as any medical treatment or procedure that is intended to change a person's biological sex; that is, their primary and secondary central characteristics whether through drugs; surgery or any other means.

Two, it would make it a felony for a doctor to prescribe puberty blockers or hormones to a minor or to perform sexual reassignment surgery on a minor under the age of 18, for the purpose of gender affirming care.

Specifically, the submission raises concern with the whole issue of whether gender affirming care is covered in the legislation. From where I sit, I do not see that the legislation speaks specifically to this but I think that we should allow for the explanation from CPC as it relates to these specific

concerns before opening up to other Members of the Committee to weigh in on the concerns that have been raised, specifically those five bulleted on page two (2) of the submission.

**Ms. SHAWN RAINE BELLE:** Madam Chairman, just to indicate that we need to contextualise a number of things. Part of that is understanding the parameters of the Child Protection Bill. It must be emphasised in particular, that the Child Protection Bill is designed to be invoked where a child is in need of care and protection. Care and protection is specifically set out in Clause five (5) and the Clause sets out all of the parameters relating to that intervention and it is in that context that then we speak to medical treatment.

Medical treatment comes up in the Bill where it talks about care responsibility and delegated care responsibility. Care responsibility in Clause two (2) of the Bill authorises the authority intervening in the context of care and protection; consenting to medical treatment not involving surgery for a child, on the advice of a medical practitioner or consenting to medical treatment involving surgery that a medical practitioner certifies in writing. This is where such treatment, surgery, needs to be carried out as a matter of urgency and in the best interest of the child.

**Madam CHAIRMAN:** Sorry, what are you referring to here?

**Ms. SHAWN RAINE BELLE:** In the definition of care responsibility in Clause two (2) of the Bill, it authorises the authority to:

*(a) consent to the medical treatment not involving surgery for a child on the advice of a medical practitioner, and*

*(b) to consent to the medical treatment involving surgery that a medical practitioner certifies in writing needs to be carried out as a matter of urgency in the best interest of the child.*

That is the authorisation of the authority when the child is in care of the authority, to basically authorise medical treatment and that may be necessary in certain circumstances. In particular, you need to note that where the surgery is necessary, it has to be as a matter of urgency.

In the definition of delegated care responsibility in Clause two (2) of the Bill, that authorises a child care centre. If a child is sent to that centre it would then, in context, consent to the medical treatment not involving surgery for a child on the advice of a medical practitioner. You then have to balance what happens, as authorised in Clause seven (7) which allows a child to participate in the decisions.

Drawing all of those things in context, the authority has to be equipped with the ability to make certain decisions where the child is in their care; the consent is there. They weigh the participation in the child but it is not the final determinant; you just take into consideration what they may say. Similarly, you need to understand the nature of the medical treatment that you are speaking to. Assignment surgery or the like would not really fit into these circumstances, particularly when you are talking about medical treatment as a matter of urgency because that type of surgery is elective in orientation, so you need to kind of

understand that. In the child care facility, that discretion would not even arise at all.

That is why then you need to understand that basically, any authority that is being organised is because the care is now the responsibility of the authority or the child care centre and they have parameters for that care but the types of surgery or what you are contemplated would not fit into the circumstances.

It is basically to deal with emergencies; basically to deal with certain treatments that would be needed in the course of childhood. That is how it is going to be interpreted. Thank you.

**Madam CHAIRMAN:** So the concern raised is mainly with elective type of treatments rather than treatments that are necessary.

**Ms. SHAWN RAINE BELLE:** Yes, Madam Chairman. That, to my mind, is where there is a concern but that would not be enabled by this legislation. Certainly, nothing in this legislation states such.

**Senator J. A. KING:** However, Madam Chairman, this opens up another problem. We have spoken about children in custody within a facility but in the household itself; let us assume that the parents themselves want or accept that they want this child to have this type of surgery. Where does the Bill; the Child Protection Bill, come in?

A parent may argue that it is urgent because of the mental state of the child wanting to transition from being whatever they are born as to something else and that causes mental problems and all of these sorts of things. One has to be very, very careful as to how you approach this because that, in my mind, is a fine example of a loophole for a person to indulge in this kind of behaviour. I think that is the nicest way I can put it.

**Ms. SHAWN RAINE BELLE:** Clause five (5), as indicated, would be a situation that articulates the parameters where a child would be in need of care and protection and that would then introduce the idea of the State intervening if a child is well, where a parent makes that sort of decision. That is a possibility. It is inverse of what you are saying. That is where the jurisdiction lies, not the other way around.

**Madam CHAIRMAN:** Just for the avoidance of doubt. You made reference to Clause five (5), maybe triggered. Specifically, where in Clause five (5)?

**Ms. SHAWN RAINE BELLE:** In other words, what would happen, is that the authority would interpret that you the parent wanting the child to receive that type of treatment is child abuse.

**Madam CHAIRMAN:** Senator Brathwaite.

**Senator Dr. the Hon. C. W. DaC.**

**BRATHWAITE:** Thank you, Madam Chairman. This is a very important topic of discussion. I wish to refer to paragraph of the submission. "*Children are being led down a path of gender confusion; an identity crisis, which is exploited and monetised by medical professionals*". This a very strong statement and one wonders whether in fact,

there is not the need for some kind of investigation to determine who are leading the children down this path of gender confusion and identity crisis.

If the children are being led down a path of confusion and identity crisis, which is being exploited and monetised by medical professionals; this is something that needs to be investigated. This is not a simple matter. I do not know whether what is written here is factual. I do not know whether there is a substantial medical basis for what is written here. I read the concern and note what is said here, "*children are being led down a path of gender confusion; an identity crisis*" and I ask by whom, "*which is being exploited and monetised by medical professionals*".

This, to me, requires an investigation because clearly this is something that I do not think the society anticipates; is promoting or at least in my particular case, understands. I do not see the need for changing the Bill to accommodate what is said. I see the need for an understanding of what is written here. If this is what is happening, then there needs to be an investigation as to what implications does this have for us; for our children and for the society which is probably outside the scope of this Bill. Those are my comments Madam Chairman.

**Ms. SHAWN RAINE BELLE:** Madam Chairman, just to comment. The mandatory reporting would trigger an investigation under Clause 24, because then if it is that you are seeing in the context of it being abuse, then you have an obligation under Clause 24 to report it and that would trigger the investigation under Part III that speaks to interventions, reports and investigations. I am just making that observation in relation to the Bill actually treating to that problem. Thank you.

**Madam CHAIRMAN:** I think that Section perhaps clarifies the concern because the Section on mandatory reporting applies to a parent; a medical practitioner; a health care practitioner; an administrator of a hospital, so I mean it provides different levels or different tiers at which they can be flags raised and therefore investigations can follow.

The submission, as it relates to gender affirming care, is specifically that the Child Protection Bill lacks a crucial area of protection and there is the proposal that gender affirming care should not be administered to a person under 18 years of age and be an addition to the Bill. With our discussion up to now, what we have to answer is whether or not the relevant Sections we referred to in Clause five (5) and Clause 24, for mandatory reporting responds to the concern that that care should not be administered to a person under the age of 18 years old and how this relates to the age at which a child is recognised as a child and so on.

The general consensus that there is no need to include this; the proposal that gender affirming care should not be administered to a person under the age of 18 years of age because the Committee is satisfied that the definition of the age of the child, taken with the other provisions adequately would address the concern that is raised without



making any further Amendment to the Bill. Senator Brathwaite.

**Senator Dr. the Hon. C. W. DaC. BRATHWAITE:** With all due respect, I think there is also the need to obtain further information on this issue. While it is true that we are not here to investigate; we are here to examine a proposed Bill and to see whether it is relevant to our reality. I think it is also important that if in the process of doing so, issues are brought to the attention of the Committee, that in our opinion would require for investigation, I think we should say so.

I think we should say that these are issues that need to be understood because it may be that down the road you may need to come with another Bill that now addresses new scenarios. We live in an evolving world. The world as you know, it is not static. New situations arise from time to time and as these new situations arise for example, new technology, there has to be legislative provisions that take into consideration new scenarios.

If in fact as has been indicated here, there is a tendency to lead and I quote, "*lead the children down a path of gender confusion an identity crisis*", we need to understand this. If there are monetary benefits being derived from this tendency, then clearly I think this is an area of concern that as a society, we should understand more about and see whether down the road we need legislation. Now that relates to this particular situation, as specific from the Child Protection Bill as it exists today. Those are my comments.

**Madam CHAIRMAN:** That can be a recommendation but obviously as you have raised it but also you have recognise that it does not square with this particular piece but it is something that is definitely worth investigating. Currently, they are no provisions for gender affirming care and human tissue modification and all of these things at present; so there maybe scope to consider that when or if these pieces of legislation are contemplated but in any event the point that you have made is a sound one. The Committee can recognise that albeit that it does not relate to the current provisions which are under our purview, it might be worth consideration to investigate the extent to which it has implications in our society and would need to be addressed therefore. Senator King.

**Senator J. A. KING:** Mr. Smith made, in my mind, the point that they are certain things already in law that children or persons who are considered children cannot do and we mentioned earlier the whole idea of being charged for some of their actions because of their capacity to think as a child. I would like to think that in this case, that this also applies. In terms of if you are talking about changing gender affirming because if a child, according to the law, is incapable of committing a crime at a certain age, then they too are incapable of making that sort of a decision and if we were to move from that, we would be as hypocritical as they come anywhere in the world. I believe that from that standpoint, that is already covered.

I also want Senator Brathwaite to take into consideration, and I noticed that you went to that particular aspect twice,

but this also is this person's opinion because there are no statistics; there is no data: there is nothing to support that this is actually happening as yet but I take the point that we need to be more proactive in terms of how we deal with this particular issue.

**Madam CHAIRMAN:** Any further comments?

**Ms. SHAWN R. BELLE:** Madam Chairman, I just wanted to just... Sorry.

**Madam CHAIRMAN:** Miss Forde.

**Miss C. Y. FORDE:** (inaudible) ... but I just wanted to add on to where Senator King had stopped if that could be allowed please. Can you hear me Madam Chairman?

**Madam CHAIRMAN:** Yes, Miss Forde. Please continue.

**Miss C. Y. FORDE:** You are hearing me now, Madam Chairman?

**Madam CHAIRMAN:** We are hearing you now. At first, it was a bit broken but we are hearing you clearly now.

**Miss C. Y. FORDE:** I apologise. It seems as though Flow does not love me this morning because of this exercise unfortunately. My system is just cutting in and out. I apologise to you and all of the distinguished members in the Chamber. I read what author had said here and I know that we are in a changing world and they are so many things that are impacting on us and the way we do these indeed in our culture; our religion; so many things internationally and the internet and the technology they are adding to some of the challenges we have and I see (inaudible)...

It is being indicated here that if such, I am not aware of it in Barbados; if it is, it is very unfortunate but if I believe that we have a special role to play. I do not think that that legislation can treat to that but we have a role to play as parents and guardians in this country and too many parents are easily led away with what they see happening in other parts of the world and too many of our young children are caught up in it; a lot of the parents, because they do not have that parental guidance or the education is not available, or they are not accepting assessing what is available, that they are falling prey to it.

Mention would have been made of a child sometime I think last year or year before, where that child turned up to school. It was a girl, a boy the evening before, the weekend before and then by the Monday morning it came into the school in a girl's uniform. It was not a Barbadian child as far as I was made aware but that started a whole lot of confusion. It is confusing the children; the parents; the guardians; almost everybody and I believe that we need to take a stand of what we do. I know that that child has no longer been at that school or in Barbados because it was not a Barbadian child but at least, the trend seems to be taking on and we are seeing our boys with their hair plaited and we are seeing all kinds of things happening and we do not know who is influencing our children; who is giving them the necessary guidance as our foreparents did where they mandated what happened in our households. They chastised other people's children. We have thrown away so many of the norms and the values that were inculcated in us and of course by the Holy book, the Bible and it really



is taking a toll on what's happening in our society and so I am concerned about the comments about irreversible, altering medical interventions and so on and so forth that I do not know if it is happening here.

Sadly, I would not wish it to happen here because we have always in our communities seen persons who had different persuasions when it came to their sexuality and we tolerated them. We got along with them. Some of them lived in our own households and communities but we did not glorify it in any way but the way things are happening internationally, it is not only impacting on the parents and guardians but some of the children and the rest of the society including these distinguished persons who have written in to express their concerns and I believe that we need to capture some aspect of them. I have not got any legal training but we have to capture more aspects of it in what we do and in what we say and how we ourselves, comport ourselves in the rest of this society. I am concerned, deeply concerned about it because I am having difficulty with children having to go and have all these hormones.

I can understand a child perhaps at puberty and they have some challenges and a parent may have to ask a medical professional to do something to ease the belly pain and so on and so forth but when it comes to altering aspects of the body and so on, that is not what God put us on this earth for.

He put a girl as a girl and a boy as a boy but whatever challenges they are in-between there we do not have to glorify them; so we want aspects of the Act as far as is possible because you cannot encapsulate everything, to be able to treat to such a matter because when you see what is written in one of the paragraphs in the other page about irreversible life altering medical interventions and some of the people discovering a new found confidence in the responsible decision making powers of children and so on; to my mind that is something that needs to be paid greater attention to and I quote the author by saying, "*We also recognise by our own laws, that minors cannot make certain decisions and therefore allow them to make life long body altering ones which many admit was a mistake and that they were too young to know better...*" What happens about the repercussions?

After this child becomes an adult and recognises the scars on the body; the different changes and so on then it leads other mental and emotional challenges that will further impact an already overburdened health system and so I think we need to pay closer attention. 'We', meaning Barbadians as a whole. Our parents; our guardians; our teachers. Teachers still have a great impact on children. Neighbours next door, they too have it. Our faith-based institutions and so I believe that we need to pay closer attention to it as a country now and not just as this Commission here to be able to see how best we can go down a straight or a more designed narrow path when it comes to matters of this nature. I commend the person for submitting it and if you would allow me after, the latter part of page two (2), I would wish to make another comment

but I do not want, at this time, to close off the aspect of discussion from the colleagues and the other distinguish members of this Commission but I would wish to make a final comment after this, Madam Chairman.

**Madam CHAIRMAN:** Thank you, Miss Forde. Ms. Belle, did you want to comment?

*(Comments made by Ms. Shawn R. Belle were inaudible because her microphone was not switched on.)*

**Madam CHAIRMAN:** Okay. Your comments are taken. Miss Forde, I think I can make allowances for you to come in. I thought that Ms. Belle wanted to come back in but I can make an allowance for you to continue to the next point that you wanted to raise on this submission.

**Miss C. Y. FORDE:** Thank you, Madam Chairman. The other part is to do with that section that speaks to sex and sexual relations with a minor under the age of 16. For me, there has to be something else placed there. Again, we cannot legislate a culture but I am witnessing over the past couple of years many of our children; some at the 11-plus age have become pregnant and I think this is some of what the author is saying about sex and I cannot imagine the agony; or the anguish; or the social challenges; or health challenges that would impact on young children because they are students.

I have had the unfortunate experience to have met one at 11 years old, whose parents were both in prison and advantage was taken of that child and, of course, the Edna Nicholls Centre where a lot of people do not seem to recognise the authority and the kind of education that that institution can extend and share information and statistics. The Edna Nicholls Centre every year was able to draw in, especially around Eastertime when there would have been donors and all of that to the exercise; no less than 15 to 20 children every year under the age of 16, who were pregnant and, of course, some of them, they had their parents who looked after them after that, but for me, whoever those perpetrators were and are; they were not schoolboys, who have been impregnating young girls, I believe something has to be done.

Similarly, there are some young boys because they do not get pregnant we do not know but some young teenagers; young boys; under-aged boys; children in primary school; children that have just gone into secondary school; they too are being perpetrated upon. I want this legislation to deal with those perpetrators. I may have missed it because Madam Chairman, you know I am not legally trained but I am on the ground as well as most of the people are and information comes to me and I played an integral part at that time, for about 15 years at the Edna Nicholls Centre every year to be able to see, witness and cry inside and then bawl out to the public, my concerns.

It is still happening and some of these children, their mothers too are young; they do not know how to deal with it. Sometimes it is a broken home; there is no father. We need to get to the real Barbados to be able to devise means

of ensuring that these perpetrators, whether they are male or female; be brought to justice and that our children live the quality kind of life that we put in place; not only through the governmental system but through the other institutions that help to carve our people and to make them proud Barbadians that we know they could be, once those measures do not impact on their lives.

Today, a teenaged pregnant mother or a young boy who has been taken advantage of or (inaudible)... and they have to live with that and then there is no maintenance and our health systems again, have got to carry the burden of it all. Yes, that is what we set out for; that our children can live better quality lives and my biggest challenge is, in the past, families had only a one roof house with a little bedroom and eight and 10 children and those issues never happened. If they did, there were on a very small scale. Now we have children in individual bedrooms; we have most of the resources necessary and our children are out there being exposed to perpetrators. We need to take more responsibility for our children.

I have a difficulty to have learned that many of our schools do not have active Parent Teachers' Associations (PTA). The PTAs; the Church and the faith-based groups; other community groups; all of them helped to shape the character and the understanding and provide the education before but it is not happening today. I am calling on Barbadians to get on board. These matters that are raised here are extremely important and we have to devise where it is not always a legal way that you may be able to deal with it but in the community with the nurturing; the guidance and the protection; we again, can get back to basics and save our young children from the exposure that they are facing.

We can do it as well in the paragraph with the alcohol. We can do it with the cigarettes and the drug ingestion. It is now a normal thing and because of what has been taking place, people are smoking and children are being given the drugs to use in front of their parents and I think that we need to get a serious as possible and hold them to account as well as the guardians and others who are destroying the fabric of our society and destroying their brains, that they now cannot become the productive citizens that we have been able to invest in and I am not talking dollars now. I am talking about the spiritual.

It is good now and it can be better if more people come on board. If more come on board, as I know you are; if the Senator comes on board; I am on board; let us work in our communities and help our children to build character and to lay foundations that can save them from this. Legislation cannot do it all. It has to be a collaborative effort from our schools; from other institutions and our villages, if we are to turn this around and those perpetrators must be brought to justice and so our justice system has to become more current; some of those cases are dragged out.

By the time that young girl who became pregnant or that young boy who would have been taken advantage of, when he is 18 and 20 years then, he is now going to Court as a

result of an incident that might have occurred when he was 10 years old or hers at 11 years or 12 years becoming impregnated or raped. I believe that we need to become more serious and we need to come back as a society and be each one's keeper, to be able to change some of what is happening here.

Yes, and I close, yes, there are some parents who would say, "*Mind your own business*" or "*Is she the only one?*" or "*I have to get money to go and pay my light bill and my water bill and I have to buy groceries.*" Why are you putting your young girl or boy out there, as a woman or a man or as a parent, which you should be, to let them be bringing in money for sexual offerings to other people?

Then it takes a toll on whatever is happening in our society and it is not good for us, a country that has been recognised internationally as being stable; as being laid in a foundation of spirituality of sound education and everything else; we need to come together as Barbadians, despite what level in the society we are at and turn it around and if we are doing it right, there would no need for all of the legislation we are looking at. We must put it in because there are some who will not conform and at the end of the day, our youth who would then become the parents and guardians of the future; their lives are at stake and we cannot settle in this society.

I believe that we need to get down now to basics and offer our services despite however we can do it to turn it around, for the better. We cannot let the international world and what is happening there that is negatively impacting on us, and therefore I am happy for this privilege to be a part of this institution where we are now looking at upgrading the legislation to ensure that we encapsulate a lot of what is happening and to curtail those maladies and help it to be a more uplifting spiritual, educational and a cooperative approach in our society can make a difference in the lives of not only ourselves and our families but those who are most vulnerable on the outside; those who need the care, guidance, compassion and everything else that go with it to make that tremendous difference. Ma'am, I am grateful for the opportunity and I want parents to become a little more serious in looking after their families, and when they need help to ask for help. That is what all of us as Barbadians are here for. I want to thank you and the team for giving me the privilege of being able to offload a little of what has been in me internally for the past couple of weeks. This is giving me to help to do it. I shall continue in the communities across Barbados to be able to make sure that the difference is made in the lives of our youths and our seniors as well, but that is another conversation. Thank you, Madam Chair. Thank you, colleagues.

**Madam CHAIRMAN:** Thank you, Miss Forde, for those very impassioned comments which are also quite relevant because a number of these issues we will recognise as we have to deal with them on this Committee. These are issues that, as you rightfully said, will not be determined by the legislation alone, but they really require a whole-of-country approach to curtailing a lot of what we are seeing. Very relevant comments. I am just bringing us back to the submission since we need to keep that tight as well. The

specific submission before us by Mr. Smith is one where he is proposing that the gender affirming care should not be administered to a person under the age of 18, and that that should be added into the Bill. What we have heard and what we have been discussing, in addition to the comments that Miss Forde raised and those raised by senator Brathwaite, the position that was offered in explanation by the CPC that there is Clause 2 of the Child Protection Bill in determining what is in the best interest of the child, where the following matters shall be taken in account: The child's safety, the physical and emotional needs of the child, a secure place for the child, the capacity of parents and persons to make certain determinations. Those are captured at Clause 2.

Then at Clause 5, we have a child in need of care and protection, which gives provision for whether the parent is fit to exercise care in a particular decision, including gender affirming care. Then there is Clause 24 of mandatory reporting where it is not left to the parent alone, but to answer some of the concerns raised there are different tiers: The school, a social worker, law enforcement, administrators of hospitals, medical practitioners in addition to the parents. These will really have to weigh in. I do not think that any parent will be able to get up one morning and say, "I want my boy to be a girl," because that is what he wants, or vice-versa. There is a system in place, and these Clauses, taken together, safeguard against the concerns raised so that there is no further need to impose into the legislation the suggestion because we also have to consider everything in those Clauses – 2, 5 and 24 – along with the definition that we have already established for a child with responsibility versus a child without.

The question, taking everything in summary before the Committee, is if we can reach consensus, whether there is no need to include the clause or whether the Committee sees that there is need to include the clause. From where I sit as Chair, we recognise that there is the concern, but for the purposes of this legislation there is no real need to include the clause that was raised in Paragraph 1 of the submission, although we respect and accept the content of the submission made as being relevant to discussion that may follow in other pieces of legislation. If I may summarise my question – because I have the tendency for long-winded questions – do we have consensus that there is no need to amend the legislation by the submission that was proffered?

**Miss C. Y. FORDE:** Agreed. It is encapsulated elsewhere.

**Madam CHAIRMAN:** We have agreement from Miss Forde. Senator Brathwaite?

**Senator Dr. the Hon. C. W. DaC. BRATHWAITE:** Chair, if I may, following up on what you have presented, while it may not be necessary to amend the legislation – because it does speak to those protections – there is need to be vigilant and to continue to investigate the veracity of statements that have been made in this submission.

**Madam CHAIRMAN:** This will be done because we have

captured that in the comment as to what has to be done, but I am very conscious of what we have to do as a Committee relevant to the Bills. We have your comments, the comments of Miss Forde, I support them fully, but from the position of the legislation is whether there is a place here for the purpose of the Committee's work. Honourable Corey Lane, I recognise your hand.

**Hon. C. A. LANE:** Thank you very much, Madam Chair and good afternoon to the Committee. I want to start right where we are now – although in Any Other Business there are things which came up while I was following online and I was not appropriately placed to turn on the microphone when you signalled me, but with your permission we can go back to that – and to speak specifically Family, Faith and Freedom's presentation and our consideration of whether to amend, and to start putting things within context of how I see the legislation. Sometimes in terms of the argument and debate out there, the jury is still out regarding the making of forward-thinking legislation and being specific in relation to trends. We can get ahead of the trend by making mention of what is happening now and where the trajectory is going, but in my own thinking and reading I believe it is always best not just to be broad but to draft in such a way that the legislation has more longevity. Therefore, we would not have to speak specifically to gender affirming care but to persons within a certain age group being able to seek medical attention; very close to the point that Senator King was making earlier.

When we make legislation so specific, you have to go back and amend and amend all of the time. I want to place an example for the Committee so that you are clear on what I am trying to say. I am of the view that sometimes in trying to make legislation specific, and you make legislation for, let us say, cell phones, in five years the technology will be different and you will not have legislation for your watch, so you have to go and make legislation for that, while in the past you had legislation for driving without due care and attention that can now cover the cell phones and the watch and whatever else comes. I want to make that direct link to what we are saying here that we just say that it is the parental responsibility or the parental involvement must be maintained in medical procedures *et cetera*. Whatever the trend is, it covers it. Now, I see a little distain on the face of the CPC, so I am nervous now. However, that is just my thinking of it.

Before I close, within this, when Senator Brathwaite spoke about the veracity of statements, there are statements in here that are clearly untrue, and then some statements that need to be checked. I will just give one example. I had the benefit of being able to do research as I listened to you all in my other meeting. I was coincidentally with the Minister of People Empowerment and Elder Affairs to which this speaks directly. When I look at page three of the presentation, the last line, it says, "*Gender perspective is one that promotes the concept of gender fluidity and teaches children that they have the right to determine their gender.*"

When you look at gender studies across universities, when

you look at the glossary, when you look at the concept of it, it speaks more popularly and most of the things that I have seen in the research, the gender perspective focuses particularly on gender based differences of status and power. It is really about how the society is structured in terms of masculinity and so on. That is what the gender perspective is. That is what the Ministry of People Empowerment is embarking on an exercise to make sure all legislation takes that into consideration. Gender perspective is not about they believe it is. Therefore, I think we have to be careful and understand as Senator Brathwaite rightfully said, to make sure we understand the veracity of these statements, because if we amend based on falsehoods, then we amend falsely. I think the second point seems to be a more agreeable point, but I will stop here Mr. Acting Chair, in terms of getting the perspective on the two points I just raised. Thanks.

**Senator J. A. KING (Acting CHAIRMAN):**

Thank you Mr. Lane. We are still trying to establish a consensus on the position that was put forward by the Chair earlier. For my own take, I think as was explained by CPC, we have the laws in place to deal with a lot of this stuff. However, I still believe that there are, and I will try to use an example, in all societies that you can think of, there is a word called illegal, and there are persons who are obviously prone to move outside of what is legal. I think that if we do not have legislation that will deal with practitioners who may illegally seek to do such things, then you will have a problem. That will be my only comment where that is concerned. I do not think it has a place in what we are discussing here as part of what we are doing. However, I believe it is something that should be considered by the CPC and the legal minds as we move forward with this particular subject.

**Ms. SHAWN RAINE BELLE:** Just to make the painful observation especially with the Child Protection Bill. The Child Protection Bill is not about the rearing of children. It is about providing the capacity for intervention when a child is in need of care and protection. Therefore, we need to set that in place.

In relation to medical treatment, I would have articulated the circumstances in which that would arise. Clause two speaks to delegated care responsibility, which deals with the capacity of care centres to make certain decisions. There is also care responsibility that is assigned to the Authority to make medical decisions. Those decision-making capacities do not admit the type of medical care contemplated by gender assignment, or any of the like, because there are elective surgeries. This is to enable the authority or the child care centre to intervene, because they are now vested in the care after the child has been declared to be in need of care and attention to be able to take of the child and to deal with the normal medical decision that needs to be made. That is the context.

Also, to make the observation in relation to international agreements. As I have explained before, if you are a party, the state is obliged to implement the rights recognised by the Treaty. However, the state has the right

to submit reservations, and I would have explained the situation where the reservations can be made.

In terms of the vulnerabilities in relation to sexual crimes being perpetrated against children, remember, we already have legislation under the Sexual Offences Act, so we have that in place. Now, there are other types of behaviours that are coming up now related to cybercrime, grooming and all of these different things. It is entrained for the Sexual Offences Act to be revisited and to be amended to address some of these concerns. I also observed that the inverse of what the presentation is suggesting is what could happen, that in fact, and especially in circumstances that were raised, you could argue that the child will be in need of care and protection, in which case then the state would intervene to protect the person. If it is that you know that the person is perpetuating this type of pressure on a child to do anything of the like, then you would report it under the legislation that is provided, and you will have an obligation to do so. Then the parameters for the investigations and so on would be triggered. I just wanted to revisit what I would have said earlier to try to bring clarity to the discussion, and there are also some things in terms of the 'participation Clause' in the Child Protection Bill that you need to understand.

The participation of the child in key decisions, is there to give an outlet to the child to express their opinions, emotions, and *et cetera*. However, that does mean then that that informs the decision in the sense that the child wants to do this or that, so therefore we do this. It is giving an opportunity for us to hear from a child in relation to the particular decisions that would be made. As I said, in the context in which medical treatment would arise, the gender assignment would never come up. I am just explaining the positioning and there is a need to understand.

Obviously, coming out of this what is very clear to me, is that there needs to be an explanation in terms of how this legislation works for the normal person. The thing is, is that you read it and it is clear to most but not to all. Therefore, the thing is to make sure that people understand, because within the parameters of how it is drafted, it abides by the specific conventions. However, in terms of then breaking down the concepts, education is required. Thank you.

**Madam CHAIRMAN:** Thank you. So thanks again for those comments which reiterate many of the positions that you had, the explanations that were offered earlier and I think it is becoming clear that the concern raised has a genuine basis however, by the explanation offered again and then that too there is need for investigation and so on; but by the explanation offered again I think that we can be satisfied as a Committee that the purpose of the legislation does not purport to address those specific concerns. There is no real place for it here and therefore what I would wish to have us do is reach some consensus therefore that whilst the issues are worthy of further investigation, the Child Protection Bill, as it is currently drafted, adequately addresses the concerns as far as the Bill is allowed to address the concerns. So can we

reach consensus on that?

**Senator J. A. KING:** You have my agreement Chair.

**Madam CHAIRMAN:** Okay. I am seeing agreement by Senator Brathwaite.

**Senator Dr. the Hon. C. W. DaC. Brathwaite:** Agree.

**Madam CHAIRMAN:** And I am hearing Ms. Forde agreeing?

**Hon. C. A. LANE:** I do not want to be the only hold out, Madam Chair but I would like to just speak before I give my agreement because those are two fundamental points. This is so weird because I had planned to just let it (inaudible) ... because I must state my disappointment for the record, that the terms when we are thinking about Child Protection in Barbados, the majority of the submissions were towards this whole concept about Gender Affirming care *et cetera*. I understand the reason for it but I have two concerns, not really two concerns but one query and a concern. The query is and I am glad that Ms. Belle explained to us the procedure to actually highlight the areas that we have international obligations for and the ability to seek exception. I do not know if this is the exercise to do so, so I would have to seek guidance on that and give a 100 per cent difference on that because it is not my field whatsoever. However, just speaking to the legislation and Madam Chair I just feel so passionate about making this submission here I was conscious of the time and I do not want to delay the time. I think it is too important an exercise to really hold it inside. When I look at Section 5 (1) and it lists, it speaks specifically about a child in need of care and protection and we may have to return to it because the next submission starts really in its title to say **Gender Affirming Care is Child Abuse is Medical Abuse** so this specific legislation seeks to understand and treat to the child who is in need of care and protection, specifically at (D) it says, "*A child who is in need of protection is where the child is a victim of abuse or exploitation.*" So does this fit there? I want to speak also about (E) "*has been abandoned or deserted by a parent.*" I do not know why I put that one there. It is not important. (F) is the one and I think this is the most significant one. "*A child who has been exposed to danger, moral or otherwise and the last one (H) "a child who has suffered from mental emotional physically or a developmental condition that requires treatment to cure and it does not get it."*

When I read those I saw the connection between this and how it can either be stated to these parties that these cover that and therefore you are covered or we seek to make a deliberate attempt to amend to suit and that is the reason I just give it a blanket.

**Madam CHAIRMAN:** And in summary therefore you're in consensus with the rest of the Committee.

**Hon. C. A. LANE:** Looks that way Madam Chair.

**Madam CHAIRMAN:** Thank you Honourable Member. So then we are onto the third submission and this submission comes from Norma Springer on Child Justice and Child Protection and the gist of this submission is that it recognises that they are different definitions of the child.

The Child justice Bill reduces the age of criminal responsibility from under 14 years as we referenced earlier to 12 years. The Child protection Bill has clauses for a child under 12 years old and then they are references to other pieces of legislation that speak to different things. There is a table at the back of the submission which speaks about the age of majority as it relates to different pieces of legislation which also relates to the previous submission on whether you use the age of 18 as a yardstick for certain things so what I think would be appropriate would be for us to have CPC clarify why the age of 12 was used because I am sure that as the Bills were under discussion that all these pieces of legislation would be taken together and they may be specific reasons for the age of 12 being used in the Child Protection Act. The ages of 12 and 14 in the way that they are used in the pieces of legislation before us.

**Ms. SHAWN RAINE BELLE:** Chair, thank you but just to put this issue into perspective. Clause 5 of the Child Justice Bill will change the age of responsibility from 11 as provided for under Section 7 of the Juvenile Justice Act to 12. So what is happening here is that there is a misunderstanding of the Juvenile Justice Act. The Act provides for different concepts of young persons and children and what is happening here is that there is a misunderstanding. What is truly being targeted is the age of responsibility and so it was taken at 12. What happened is at the international level in the CRC which is the Convention on the Rights of the Child, there was an indication that an age should be set, and therefore the Cabinet of Barbados would have agreed on 12 and that was seen as acceding to the provisions of the treaty and so that the persons who are under that age would not be criminally responsible in the eyes of law. The issue of the definition of the child in terms of the ... well okay. I need to make some distinctions in relation to definition of child. At the international level under the CRC, a child is considered to be a person who is under the age of 18 so the Bill then sets about in Section 2 to define it as such in Clause 2 but what happens also is, and I would have drawn this to your attention, is that they are consequential amendments that are taking care of in the sixth Schedule and I would draw your attention to that Schedule and as I indicated this Schedule is actually for consequential amendments to enactments that are relevant to the child justice system and it is important to bookmark that because when we come to look at the table then I will make certain distinctions; so under the Bail Act you would have seen there is an intervention to redefine child as under the age of 18 and the definition of 'young person' would be deleted okay. Is that right? Okay.

Then in certain sections within the Bail Act, then you would intervene to make sure that you take out the artificial definitions of 'young person' and 'child' so that there is a regularisation of the definition of the word 'child'.

It is really important for people to understand this kind of thing. Legal services which is basically legal aid, there is an intervention where you are talking about the

definition of child as set out in the Child Justice Act with the definition of child as being under the age of 18.

Then we would see in the Criminal Records Rehabilitation of Offenders legislation and an intervention of the same type where you regularise here again, under the age of 18 and this relates to drug abuse, education and the Magistrates' Courts.

I am sorry. I crave your indulgence, Madam Chairman.

**Madam CHAIRMAN:** You have it.

**Ms. SHAWN RAINE BELLE:** The Penal System Reform and our Magistrates' Court Criminal Procedural Rules. The intervention is made throughout having to do with the legislative apparatus that supports child justice. The intervention was made through this vehicle of the consequential amendments to accommodate then, the change and the regularisation of what is understood to be a child within the criminal justice system.

We are going to the end of the presentation where it talks about the various areas.

The Constitution of Barbados is different on its own and it uses the word person which would include a child. The Representation of the People Act deals with voting and it is a different context.

The Adoption of Children a different context.

**Education:** Well I would have shown the intervention where relevant.

**Medical Services:** Again, I would just point out that the Child Protection legislation has the parameters of intervention, but you understand the concept of the child.

**Access to Justice System:** Now what is happening is that a platform is being put in place so that the child then can make certain submissions and within the context set out in the very legislation that we are proposing.

**Juvenile Offenders:** The person is not understanding that that will be repealed by the Child Justice legislation. Juvenile Offenders would be taken over by the Child Justice legislation.

**Age of Consent:** In relation to sex, that is a completely different discussion and it is dealt with under the sexual offences legislation.

**Age of Medical Consent:** Again, that is a different subject.

**Criminal Law:** Well they are talking about the Sexual Offences Act and so on and as I said, there will be certain interventions that will be made in order to modernise it and address although this situation is a bit strange.

**Criminal Law Offences Act/Intervention Management Act:** completely different context to which you are speaking.

**Employment/Factories:** Factories has been repealed.

**Contract Law:** A different area of law where you have a minor enters into it, it would be void.

**Title to Property:** Again, a different area of law.

What I am pointing to, in other words, is that the Child Justice Bill sets parameters for what would be understood

for the purposes of dealing with a child who has interacted, who has any conflict with the law as being understood to be a person under the age of 18. The necessary amendments have been made in the Consequential Amendments Schedule to various pieces of legislation that undergird the operation of this proposed Bill in order to regularise that understanding.

I hope this would help to explain the approach that has been taken in relation to this matter. Thank you.

**Madam CHAIRMAN:** Thank you. So from strictly a layman's perspective, there are pieces of Barbados legislation that will make reference to different ages and that is based on the context. This legislation, while it speaks to the age of 12 or uses the age of 12 to be the age at which a child is not responsible ...

**Ms. SHAWN RAINE BELLE:** That is a conflation of two different issues. The understanding is, for the purposes of the legislation, is that a child is under the age of 18. The age of responsibility is now being identified as 12 so that those who are under, would not be held responsible considering the tenderness of their age, *et cetera*, their lack of ability which would mainly be their capacity. They would then be dealt with differently; as a child in need of care and protection under the Child Protection legislation. There are two different issues.

**Madam CHAIRMAN:** A child who is over the age of 12 accordingly ...

**Ms. SHAWN RAINE BELLE:** Yes. Then they would be dealt with in accordance with the Child Justice Bill as laid out.

**Madam CHAIRMAN:** And then we have the Schedules that are really ...

**Ms. SHAWN RAINE BELLE:** Right. So the Consequential Amendments now facilitate the operation of the Child Justice Bill so that when you are drafting legislation it is contemplated that other pieces of legislation would be affected as a consequence of what you are doing so you have to then go into the legislative database to deal with all of those things. You do not capture all at all times, but we make it as fulsome as possible in order to cover that.

**Madam CHAIRMAN:** To operationalise the current pieces so that in short, there would be no conflict or should be no conflict.

**Ms. SHAWN RAINE BELLE:** Exactly, so that you would prevent conflict.

**Madam CHAIRMAN:** Understood. Any comments? Senator Brathwaite.

**Senator Dr. the Hon. C. W. DaC. BRATHWAITE:** Madam Chairman, does it therefore mean that all those pieces of legislation that support or have supported the development of this particular Bill are now null and void?

**Ms. SHAWN RAINE BELLE:** No. They are only amended to the extent as identified by the Sixth Schedule. The Sixth Schedule deals with the regularisation of age as it stands in the Child Justice context, so the legislation stands and it would only be amended to the extent as

identified in the Sixth Schedule. For example, let me just crave your indulgence again, Madam Chairman. For instance, let us say we look at bail again; Column 1 identifies the legislation that is to be amended, and Column 2 speaks to the way that it will be amended. It says in Column 2, delete the definition of the word “child” and substitute the following: child means a person under the age of 18. B. The definition of the word “young person”, so it is deleting that definition. That Act is amended only to the extent that the Column 2. It does not invalidate the whole Act. This is a mechanism to save parliamentary time. In other words, you do not want to then come with all of these Bills. It is a drafting mechanism to save time and to address those pieces of legislation would touch and concern your main exercise.

**Madam CHAIRMAN:** Are there any other questions or comments? If none, what we are hearing from the submission and if we are accepting it, while a Schedule was presented as being a source of concern, given the different ages or definitions to treat to the age of the child, we are hearing that there is no real conflict because the Bill contemplates and accepts that the age of a child is under 18.

**Ms. SHAWN RAINE BELLE:** I am sorry, Chair, but I just need to make it clearer because it is clear that people do not understand, but when you have those lists, some of those pieces of legislation that appear there exist within their own sphere. Then there is legislation that exists within the child justice sphere which we had to amend in order to accommodate its operations. Therefore, I just wanted to make that very clear so that people can understand. It is dry, but it is necessary for understanding. Thank you.

**Hon. C. A. LANE:** Madam Chair, I just want to offer up this comment with hope that it can be considered as we go through this exercise, but more importantly by the CPC. I am not a drafter, I do not have a legal mind whatsoever, but as a critical thinker I too am concerned about the different ages, the conflict, the dichotomies, the anomalies that they literally create on an everyday basis. You would admit that there is a thinking that law in the past really was sometimes too divorced from what happened in practicality, and that is something which I know law has tried to take more into consideration. Put simply, I believe that we should establish what a minor is and a child is, full stop. Then specifically point to various ages based on the context, so that we do have that demarcation.

I also get the opportunity to raise this point now. The point that Senator Brathwaite was making earlier in terms of age 12, some jurisdictions have their age of criminal responsibility as high as 18. The lowest is seven, which is Trinidad. If you look it up, you will see that Nigeria's is 11, but Trinidad actually has it at 7. Again, to make legislation as broad and to give it the most longevity, to me, I would say something like “all minors under 18 will be assessed to see if they have the capacity” because your seven-year-old child is not the same as my seven-year-old child. Your child may have more sense in terms of knowing what he or she is doing than his 13-year-old child. They are not

homogenous because of the age which they are. It has a lot to do with different factors. I am not trying to draft any law. What I am saying is that this should be a general approach we can take to this legislation and in legislating. I feel nervous about it because, as I said, I never went a day in law school in my life, but I just think that is a sensible approach.

**Ms. SHAWN RAINE BELLE:** Just to make an observation, Chair. What you are contemplating would really be dealing with the law as it relates to children in general omnibus legislation, which would be quite large and sometimes can also be confusing to readers. Nonetheless, the nuances that being highlighted are still going to appear because we need to understand that for the purposes of a minor, for example, assenting to contracts, they cannot enter into contracts. You cannot then look at it in a different sphere and then apply it. Even in that omnibus approach, you would still be making those distinctions, so it is not going to eradicate it entirely. That is what I want to highlight to you in relation to the approach. Thank you.

**MADAM CHAIRMAN:** Senator King.

**Senator J. A. KING:** Thank you, Chair. I think where a lot of the confusion has come is this: If my memory serves me correctly, in the first iteration of this Bill it was called the Juvenile Justice Bill. Juvenile covers a certain amount from this age to this age, but I think because we have changed the name now to the Child Justice Bill, people have missed the whole point about what a juvenile is, and then to make the distinction for those who must be accountable you have to then change the ages rather than the terminology. If people had the definition for what is a juvenile, a juvenile would come between this age and that age. Then if you said after that a child who is a juvenile, but as a clear distinction as to why – as was mentioned – I think that would have helped in the early part. The explanations given are, for me, exactly correct but I just think that the change from Juvenile Justice Bill to Child Justice Bill has added to the confusion that we are getting.

**Ms. SHAWN RAINE BELLE:** Chair, just to make the observation. Yes, in the earlier iterations it was known as the Juvenile Justice Bill. Based on the Ministry's consultations with various experts, what has happened is that the word “juvenile” has taken on a pejorative type of connotation, and in order to distance ourselves from that type of connotation we have used “child”, and we oriented the discussion to make sure that people understand that the punitive element is not the central element. It is part of it. The punitive element would be tailored to the child and also to understand that rehabilitation is also the aim. I think I needed to point that out. Thank you.

**Madam CHAIRMAN:** We need to have some consensus to move forward on this one. Since I see no further indications, what we are seeing regarding this submission is that the concerns are acknowledged and recognised but we are satisfied that the definition provided for and the treatment in the Schedules as it relates to the consequential changes are already covered. I am seeing nods of approval.



Miss Forde, do we have your agreement that we can move forward?

**Miss C. Y. FORDE:** Yes, Ma'am.

**Madam CHAIRMAN:** Thank you very much. I think we have time for at least one more submission. The fourth one on the list is one presented by Marsha Hinds-Myrie and Anya Lorde. This submission from Operation Safe Space notes that they are generally satisfied with the two Bills but they offer a few major concerns.

The two pieces of legislation, they regard them as not doing much to change the experience of service users who come into contact with them. They also regard the pieces of legislation as continuing the layering of bureaucracy in treating to the needs of children and Government officials remaining outside of accountability. They are acknowledging or recognising that there are some grammatical errors, but the focus of the submission is not on those errors. However, their concern zeros in more on how parents can be helped to navigate the system that the laws will give rise to. They go on to indicate that the system will see more so-called lower class people, or people from a particular strata having to access the system, because according to their submission, people from the upper strata in society are better able to access other services and so on to help their children. The question is, who is the law for? Working class parents and children who present for services as will be outlined in both Bills often have a lack of knowledge about their rights. Therefore, the concern is that parents will need to be educated and sensitised about the Bills. Service providers interact with members of the working class in disparaging ways, so this is a concern that they are flagging will need to be addressed. The issue of bureaucracy manifesting itself in two major ways. First there are the attitudes of the officers who function in the bureaucracy and secondly, the inability of the state to provide adequate resources to make bureaucracies function in a timely manner.

They also go onto to raise concern with whistle-blower provisions, because they cite a resentful experience with the Government Industrial School for instance, which revealed that the whistle-blower legislation that protects board members and other stakeholders as they carry out their duties, as important. If board members or other stakeholders who raise alarms about issues within the system can just be dismissed, then how is accountability assured?

In this submission, it is not proposing any specific changes to the pieces of legislation, but the submission is raising or sounding an alarm as it relates to the level of bureaucracy, the provision for whistle-blowers, also the sensitisation of parents who in the view of the submitters, will be accessing the system and who would essentially be aware of their rights, and two, how to navigate effectively through the system.

This submission is really before us for discussion and comment. I recognise Mr. Lane.

**Mr. C. A. LANE:** Thank you Madam Chairman.

For me, reading this submission was interesting. I actually agree with a lot of the points and the deficits in the system. I suspect that it might be the view of the majority that you cannot legislate the attitudes of people within the system, therefore, a lot of the submissions here respectfully does not speak to what our role is, which is the legislative process and the content of the Bill. With that said, I do not know how we are going to report back to persons who took the time and energy to write and I think that for example, in this case the two persons who submitted should take comfort in the fact that when you talk about treatment and service the amalgamation exercise is specifically designed to deal with that, and that does not require any changes in the legislation. The other thing about it, before I was shifted from the Ministry, I know they were working on something I had proposed to them in terms of changing a mechanism from complaints to compliance in terms of the public being able to make digital, anonymous, or even complaints of treatment. To me that is more the operationalisation of the Ministry than the Child Protection Bill.

Secondly and similarly, about parents being educated, I believe that that again will be required by the Ministry to have public education around. The part that I think is related to the legislation, is where it says that there are certain things they need to know. There certain things they need to know for instance, the length of time that the children can be held and those sort of things. Those things are already in the legislation, so they can take comfort in that.

Then, the whistle-blower point, I think that that is for other legislation again, that is not for here. There is a point that is close to this, but it is tangential, it is not directly connected where like mandatory reporting and so on, and that covered here separately. I will leave CPC for that one, but she is speaking about whistle-blower and other cases to me will have to go in specific whistle-blower legislation to cover the entire society and not necessarily whistleblowing just in relation to a child protection facility for example that is spoken to in the legislation. Thank you.

**Madam CHAIRMAN:** I recognise Senator Brathwaite.

**Senator Dr. the Hon. C. W. DaC. BRATHWAITE:** Thank you very Madam Chairman. The proposals and comments presented in this paper in my view identify two important weaknesses in our system in the administration of services. In summary, the section that says, who is the law for, raises a question of the quality of the service providers, those who are responsible for providing the service. The question that would arise if we are to read between the lines, is whether the people who have been selected to provide the service to those who need the care and protection of their children are in fact trained to do so. Whether they have the skills. Whether they have the capacity. Whether they have the orientation that is necessary to make sure the success of the process. If they do not have the right attitudes, if they have not been trained, and if they do not understand the context within which this is being proposed, we are not going to be successful.



There are two aspects here that are needed. One, training of the service providers in the provision services that they understand that they are service providers. Two, parental training, giving parents the opportunity to understand that they have a responsibility that is far wider than just making the child. They have a responsibility to make sure that child is taken care of and is successful and has the environment for growth and development. There is need for parental education. Just this weekend, I was talking with someone who is responsible for the institution that deals with children and girls, PAREDOS. They were talking about the role that that institution plays in helping parents to understand their responsibility as parents. This seems to be something that is lacking in our society, because in the old days, the new parents got the instruction from their grandparents, but now with the configuration of families today, grandparents are no longer within the household. There is a break in that transmission of values and procedures *et cetera* and therefore the need for parental training, I think is something that we see. The Church played a very important role in the past apparently. It is not as active now as it was in the past. There is need for parental training and there is need for training of service providers. This is what I capture from this particular presentation Chair. Thank you.

**Madam CHAIRMAN:** Senator King.

**Senator J. A. KING:** Thank you Madam Chair. I want to agree with some of what both Senator Brathwaite and Minister Lane have mentioned. This particular submission does not speak specifically to any problems within the legislation itself. It talks about operational problems within the systems that we think. I agree with you 100 per cent that ongoing training in any of these organisations be it the GIS, Child Care Board whatever it is you have to have ongoing training because the environment around this is always changing and changing and changing rapidly also, when you mentioned the idea of the families before the family structure of today is completely different to the family structure of when you and I would have been young. I try to make this point because many years ago your grandmother you expected her to be in her 60's, 70's or whatever. If you come in today's world and you have a grandmother at 46 and we have to get real about these things because I think we like skirting around and I am not one who likes skirting around; we have a grandmother who is 46 and she is still a young woman and she is still out there dating and doing other things. You cannot expect her to look after anybody else's children.

We have to be real and as we begin to deal with what the real problems are, where people are getting children but they are not prone to taking the responsibility for making these children. It is fashionable, you watch television and the movies and it very easy to get up one morning and decide I am done with that and I am gone and leave the children in all sorts of, well I would say, difficult situations. So I think that what we need to do, but it is not in our purview so to speak from what we are doing here, but I think that the general consensus should be 'yes' ongoing

training needs to be done; but they are two words that I always like to ask people to look at. One is attitude and the other is aptitude and unfortunately for us, lots of the times in Barbados in particular I would speak about where we are more interested in people's certification rather than their character and so therefore you can get persons who have all the qualifications that are necessary because it is a small place and people need jobs and people will go and learn and do things to ensure that they get a job.

Now if they actually like the job or if they are actually concerned about what they are going into, that is another matter altogether. How do you deal with that? You have to now have aptitude tests or whatever else it is you are doing so these are just a number of things that I think we need to deal with but at a different level outside of this particular forum but I agree with both of you that training is necessary and ongoing for persons within these areas. Thank you Chair.

**Ms. SHAWN RAINE BELLE:** Chair, just to say that we understand that the knock-on social ills cannot be cured by legislation but to the extent that the legislation does speak to a part of the issue of setting standards for the way that people operate. For instance, the Child Justice Bill, it speaks to in Clause 6 the principles to be applied when dealing with children and those standards are then set out and it is voluminous to the extent to which it goes into that direction. Similarly, in the Child Protection Legislation it speaks to the principles that are to be applied in the administration of the Act in Clause 4 and so to the extent that it sets a standard or a bar. A bar not so low that you would step over it but a bar that provides parameters and standards for how to operate.

In relation to 'reporting' I just wanted to draw the Committee's attention in the Child Justice Bill to the part of it in Clause 24 specifically six, well let me start with five. Nothing in this section abrogates attorney-client privilege. A report made under sub section 2 may be made anonymously. A person who in Clause 24 (8) a person who makes a report in good faith shall not be liable to prosecution and then in Clause 27 it speaks to protection of persons who make reports and then it goes into the various circumstances in which protection would be extended; and so to that extent then, they are protections that do in fact exist under the legislation. Thank you.

**Madam CHAIRMAN:** Thank you Members of the Committee for your comments on that submission as we recognise that there is nothing specific to Amend but just a number of things to take note of and to embrace the comments made there. They are some provisions that will be made and other pieces of legislation for instance like Whistle Blower Legislation and so on, but with all pieces of legislation being introduced there is the recognised need to do the necessary training and sensitisation to ensure that providers are suitably trained and also users, those that will have to access are well aware of their rights and the requirements of the pieces of legislation. It is now 1:20 p.m. and we have gone through four written submissions. The proposal would be for us to adjourn this meeting at this

---

time with a view to reconvening next Friday at 10 a.m. where we would hope to conclude our examination of the remaining six written submissions and then we should be in a position to commence the oral presentations. So, a motion.

#### **ADJOURNMENT**

**Senator J. KING:** I move that the session be adjourned.

**Ms. C. Y. FORDE:** I beg to second that until the 15<sup>th</sup> of September.

**Madam CHAIRMAN:** Is that is good for you Ms. Belle, the 15<sup>th</sup> of September. Okay until Friday, September 15<sup>th</sup> at 10 a.m. The hybrid format as well will be facilitated. Thank you Committee Members, the meeting stands adjourned. For those of us here, lunch is downstairs.

#### *Asides*

*The question that the Committee be adjourned until Friday September 15<sup>th</sup> at 10 a.m. was put and resolved in the affirmative without division and Madam Chairman adjourned the Meeting accordingly.*

**THIRD MEETING OF THE JOINT SELECT COMMITTEE (STANDING)  
ON SOCIAL SECTOR AND THE ENVIRONMENT  
ON THE  
CHILD PROTECTION AND CHILD JUSTICE BILLS, 2023  
HELD IN THE SENATE CHAMBER, PARLIAMENT BUILDINGS  
TRAFALGAR STREET, BRIDGETOWN**

**FRIDAY, SEPTEMBER 15, 2023**

**FIRST SESSION 2022-2027**

**IN ATTENDANCE**

**Ms. TONI N. S-A. MOORE, J.P., M.P. (Chairman)**  
**Senator JOHN A. KING, B.S.S. (Deputy Chairman)**  
**Mr. TREVOR A. PRESCOD, J.P., M.P.**  
**Miss CYNTHIA Y. FORDE, J.P., M.P.**  
**Senator Rev. Canon Dr. JOHN A. ROGERS, B.Sc.,  
B.A. (Hons), M.Phil, D.Th.**  
**Senator Dr. the Hon. CHELSTON W. DaC.  
BRATHWAITE, Ph.D.**

**ABSENT**

Hon. COREY A. LANE, J.P., M.P.

**ALSO IN ATTENDANCE:**

Ms. Beverley S. GIBBONS (Deputy Clerk of Parliament)  
Mr. Nigel R. JONES (Deputy Clerk of Parliament)  
Ms. Shawn Raine BELLE (Chief Parliamentary Counsel  
(Ag.))  
Miss J'anne C. GREENIDGE, (Typist) (Journal  
Department)

*The Chairman called the meeting to order at 10:07 a.m.*

**Madam CHAIRMAN:** I just want to welcome everyone to our third meeting. The anticipation today is that we will examine the remaining six (6) written submissions. Once these submissions have been examined, we hope to be able to commence the process of examination of oral presentations. That will constitute the next part of our work.

The second item on the Agenda would be the Minutes. I would wish to entertain a motion to defer the minutes for the meeting last Friday, September 8, 2023 until the subsequent session, so that we can commence our work on the examination of written submissions.

**Senator J. A. KING:** I ask that the minutes be deferred.

**Madam CHAIRMAN:** The continuation of our written examinations. Last week, we looked at four (4) written

submissions and the fifth submission that is before the Committee for examination comes from Mr. Kammie "Mac" Holder, "*Fathers for Justice Barbados*". Do the Committee Members have the submission before them?

Okay. The submission before us is very well outlined in terms of the articles to which it refers and the proposal would be that we would take it article by article as presented. In the first instance, concern is raised with article three (3) and the concerns surrounds the best interest of the child.

I think I can take it as read. I think that the submission here, is best encapsulated in the last paragraph, where the concern relates to the courts no longer being able to be used as weapons by custodial parents to avoid an emotional trauma for children and so on. It really relates to courts being adversarial by nature and not being best placed to deal with highly emotional matters. I am not sure what the suggestion is in the concern raised but Ms. Belle wants to come in.

**Ms. SHAWN RAINE BELLE:** Madam Chairman, just to indicate that my examination of Mr. Holder's submission is that he actually used the Convention on the Rights of the Child to guide his critique. What I propose is to just give a response based on the way that...

**Madam CHAIRMAN:** A holistic response?

**Ms. SHAWN RAINE BELLE:** Yes. Just to indicate that Article Three (3) speaks to the Convention on the Rights of a Child. That speaks to the best interests of the child. Clause 3(1)(e) sets out the purposes for the Child Protection Bill; this is to ensure the best interest of the child is given paramount consideration in all matters. Clause 3(2) states that matters must be taken into account in determining what is in the best interest of the child. None of the matters identified would act to prejudice the rights of the father or a non-custodial parent.

The Child Justice Bill does not define the term but cites it as an important consideration in the following Clauses. Clause 25(2): when persons are to attend an initial enquiry, a parent is supposed to be there and that would include mother and/or father.

Powers and duties of a magistrate with respect to the initial

enquiry, again attendance of parents. Release of a child in care of a parent or appropriate adult insofar as there is a particular granting from the Court, then there is a reason to care. Postponement of initial inquiry; requirements to comply with an attorney at law; revocation or suspension of integration order. All of these involve necessarily all the parents and so again, you can see that they would not prejudice the father of a child or a non-custodial parent. In fact, in each case it would show that there is an effort on the part of the legislation to involve parents.

In terms of Article Four (4), which speaks to the Convention on the Rights of the Child: the implementation of those rights and the concerns that are raised here are to be addressed with the Ministry of Education. This has to do with visitation at the school and all of that needs to be dealt with at the Ministry of Education and not in the context of the Child Protection Bill or the Child Justice Bill.

In relation to Article Eight (8) of the Convention on the Rights of the Child: preservation of identity; nothing in the Child Protection Bill or the Child Justice Bill operates to rob a child of his identity. In fact, Clause 4(f) of the Child Protection Bill, states that "*where a child is removed from the home of his parents under this Act, whether temporarily or permanently:*

*(ii) the child may retain relationships with people significant to the child, including his parents, relatives, peers, family, friends and community, unless it is contrary to his/her best interest."*

The Child Justice Bill contemplates the involvement of the parent at various stages of the operation of the Child Justice System and I would have articulated those areas earlier.

Article Nine (9) of the Convention on the Rights of the Child speaks to the separation from parents and again I would cite Clause 4(f)(ii) of the Child Protection Bill which promotes the retaining of relationships unless it is contrary to the child's interest.

In Clause 6(3)(b) of the Child Justice Bill, it specifically speaks to where a child is detained under the proposed Act, he has the right to a reasonable number of visits by a parent.

Article 7 of the Convention of the Rights of the Child speaks to the right to adequate standard of living.

**Madam CHAIRMAN:** May I interrupt on Article Nine (9)? His concern has to do with the fact that decisions to separate children from their parents must be made by competent authorities.

**Ms. SHAWN RAINE BELLE:** Right, but again that is a situation that would have to be dealt with in other legislation but what I wanted to show, is that in the context of the Bills, there is a promotion of 'relationship'.

**Madam CHAIRMAN:** That promotion of relationship is under the responsibility of the Board and its Chairman?

**Ms. SHAWN RAINE BELLE:** No.

**Madam CHAIRMAN:** You are saying that the scope of this Bill does not address his concern that the decision to separate children from parents should be done by a

competent authority. How far do these pieces go?

**Ms. SHAWN RAINE BELLE:** Okay. Remember that the Child Protection Bill is speaking to intervention in relation to children who are supposed to be vulnerable and in need of care and protection; that is a different scenario and in terms of the Child Justice Bill, that deals with children who are in conflict with the law. In those cases, there are competent authorities to deal with that situation but those Bills also set the parameters where separation would happen. The case that he is contemplating - that sounds more like custody or something like that.

**Madam CHAIRMAN:** Okay. When we respond to him that must be made clear.

**Ms. SHAWN RAINE BELLE:** Yes, the context of each Bill has to be made clear. What did come out in most of the submissions is the fact that the interpretation of the Child Protection Bill in particular seems to have been that it is speaking to the rearing of children but if you read the Bill carefully, especially in the "Purpose"; it does articulate clearly that it has to do with care and protection. It is cited as one of the purposes that has to be interpreted wholly and so that is a misinterpretation and through education, that is how we would have to answer those types of questions.

In relation to, "the right to be heard", Clause seven (7) of The Child Protection Bill meets provisions for a child to participate in the decisions affecting him and in Clause 6 (1) (b) of the Child Justice Bill, gives a child the opportunity to respond before any decision is taken which affects the child.

The Convention on the Rights of the Child, Article 30, which deals with freedom of expression, that freedom of expression is protected in the Child Protection Bill Clause 7 (2)(b) and I would not hesitate to say that even the 6 (1)(b) in the Child Justice Bill also preserves the right to expression. The right to privacy in Article Nine (9), Convention of the Rights of the Child, this is a matter that needs to be dealt with in other legislation. Parental responsibilities Article 18 Convention on the Rights of a Child, again this is a matter to be addressed elsewhere.

In terms of the administration of the Juvenile Justice System. What I would say is what he specifically spoke to, needs to be dealt with in other legislation but to the extent that the Child Justice Bill speaks to the Administration of Justice for Children, that is a specific Bill that is setting in place a system that is specifically designed to speak to children in conflict of the law; upholds Article 40 of the United Nations Convention on the Rights of the Child, seeing that state parties recognise the right of every child accused of, or recognised as having infringed penal law, to be treated in a manner consistent with the promotion of the child's sense of dignity and self-worth which reinforces the child's respect or the human rights or fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming of a constructive role in society and those would have been illustrated when I went through the Bill with the use of the explanatory

memo which the Members of the Committee would have to refer back to as well as the Bill. Thank you.

**Madam CHAIRMAN:** Thank you, Ms. Belle. Members of the Committee, do we have any questions or comments?

**Senator Rev. Canon Dr. J. A. ROGERS:** The last bit here on administration of juvenile justice, I just want to bring a case that came up in the United States of America (USA) this week with the young man who slashed his teacher in a special needs school. How does the Bill deal with that?

**Ms. SHAWN RAINE BELLE:** In that circumstance, the Bill speaks to the process of engagement with the law. That child then would be in conflict with the law having assaulted the teacher so then there would be a system of apprehension by the police. They would then be taken into assessment which is done by the Probation Department. They would be taken to initial enquiry. That is done by the magistrate; they would go through a system of deciding how they are going to be dealt with in the initial enquiry stage.

If then it is decided that it needs to be dealt with in the court proper, then it would go to the court proper but if not in the initial enquiry stage then they may choose a diversion option level one (1); two (2) and three (3), depending on the seriousness of the matter. If they decide to go to the court, then we would have the trial and then if they are found that they have committed the offence then there would be sentencing and then when they have the sentencing then we would decide how the child would be detained and deal with the detention and lastly, then they would deal with the circumstance under which they would be released. So, that is whole process running down from A to B from apprehension to reintegration. Thank you.

**Senator Rev. Canon Dr. J. A. ROGERS:** Would that be a case where these two Bills speak to each other?

**Ms. SHAWN RAINE BELLE:** They could speak to each other in the sense of if it is found that the circumstances that would have motivated what happened, would be properly placed under Child Protection, then it would be rerouted. However, in that case, because it is an assault, it would more likely stay within the Child Justice stream.

**Madam CHAIRMAN:** You do not look satisfied.

**Senator Rev. Canon Dr. J. A. ROGERS:** I am satisfied with the explanation but I was just thinking about that case because the child is of special needs and they are treating him as an adult now.

**Ms. SHAWN RAINE BELLE:** No, they would not be treated as an adult. The Child Justice System, as organised by the child Justice Bill, the presumption that the person is a child so they will be dealt with differently. I will show you, for instance in the initial enquiry; a lot of that would be done in an informal way. It would be done in child friendly language. The person would then be explained what their rights would be. The right to be heard; the right to have their parent present; the right to have an attorney present; they would have various assessments, so it is very different from the ordinary court system.

**Senator Rev. Canon Dr. J. A. ROGERS:** I am happy to

hear that because what I am speaking of is a different system of course, the USA system, so I am happy to hear. Thanks.

**Madam CHAIRMAN:** Any other questions, comments from Members of the Committee. Welcome Senator Brathwaite and I see you have a question.

**Senator Dr. the Hon. C. W. DaC. BRATHWAITE:** Good morning Madam Chairman, let me apologise for being a little late but I am indeed pleased to be here and to have the opportunity to say a few words with respect the matter under consideration. I think that the document presented by Mr. Kammie Holder makes the case for greater involvement and engagement of men in the care and protection of children and I made the point in the last meeting that we must be very careful to ensure that at every stage in development of the legislation, which has to do with the care and protection of children; that it is clear to all, that a child has two parents. I am sure Senator Rogers would probably agree with me, the only case in which this can be challenged is the case of Jesus Christ and the Virgin Mary. In that sense, I think it is fundamental that men be seen as responsible individuals; responsible for the care and protection of their children and irrespective of the difficulties and the differences that may arise between and among parents, that at the end of the day it is the child that is central and important in these matters.

In that sense, I think the whole question of giving appropriate rights to the father to intervene and participate in the care; parental control; parental supervision and the rights of the father to be heard in all cases, is a very important aspect of what we are doing here today.

I think it is unfortunate to see that in the last paragraph of Mr. Kammie Holder's presentation, the kind of money that is being requested for the examination and the consideration of maintenance cases. I think that this in itself is a deterrent to the participation of fathers in the management and the protection and care of children.

I heard some time ago that there were plans for a Family Court. I am not quite sure whether the Court has been established or whether it is still a matter that is pending but clearly, Madam Chairman, if a father has to pay \$10 000 to be heard and for the case of the protection of his child to be considered by the court, this in itself is a deterrent for that father to participate in the care and the supervision of his child. I think this is a matter that should be examined carefully and taken into consideration in the design and in the development of this particular legislation.

Thank you, Madam Chairman.

**Madam CHAIRMAN:** Ms. Belle.

**Ms. SHAWN RAINE BELLE:** Madam Chairman, as I did outline earlier, there is nothing in the legislation that prejudices the rights of a parent; a father or a non-custodial parent. The legislation specifically encourages the involvement of the parent. I would have gone through this Section certainly in the Child Protection Bill as well as the Child Justice Bill. The Child Protection Bill encourages the retaining of the relationship with the parent unless it is not

in the best interest of the child. In the Child Justice Bill, the involvement of parents at every stage of the Child Justice system and I would have gone through the stages from apprehension to reintegration; the parent is supposed to be involved. That is the right of the child in that context. Thank you!

**MADAM CHAIRMAN:** Senator Dr. Brathwaite, any further comment?

**Senator Dr. the Hon. C. W. DaC. BRATHWAITE:** Madam Chairman, I accept the explanation as presented by the legal luminary in our presence but I still find it prohibitive if, in fact, the sum mentioned here and I have no evidence whether or not the sum mentioned here is correct but if the sum mentioned in this submission, is the kind of money that has to be presented to hear and to discuss the affairs of a child in the court; I think that this is in itself a deterrent to participation of fathers in the management and care of their children.

**Ms. SHAWN RAINE BELLE:** Madam Chairman, it is also important to raise the context in which this is being brought up and it would have been the personal experience of Mr. Holder and it would be and it sounds like, in the context of a maintenance matter, which is dealt with and governed under separate pieces of legislation. If there is supposed to be any submission in relation to reform; it would be in relation to that. Of course, Mr. Holder is free to submit his recommendations to the Law Reform Commission established under the Law Revision and Law Reform Act and he is free to do so. Thank you!

**Madam CHAIRMAN:** Perhaps, in our response to him, he can be informed of that or reminded, rather, of that specific right of his. I think we should do that. Are there any further questions or comments regarding Mr. Holder's submission?

I hear none, so I take it that the Committee has been satisfied that the concerns raised by Mr. Holder have been adequately examined by us and responded to, with the assistance of our technical support and that we are now in a position to respond to his submission and further, that the submission places no responsibility on us to recommend any change to either piece of legislation; either the Child Protection Bill or the Child Justice Bill. May I take that as the case?

*(Members of the Committee responded in the affirmative)*

**Madam CHAIRMAN:** Thank you, Members of the Committee. We may move on to the next written submission which comes in two (2) parts. It is by the same person; two (2) submissions by Mr. Victor Hoppin.

Mr. Hoppin submits in the first instance; his concern has to do with timeframes, the three-to-six-month timeframe. Whether or not it is adequate for the kind of changes that the Child Protection Bill contemplates. He also raises a concern with follow-up because he is citing

that families have some serious issues that cannot adequately be dealt with in the kind of timeframes that he recognises to be referred to in the Child Protection Bill. That is the first one to which we are to respond.

His second concern has to do with the policy of diversion. In his view, diversion as presented in the Child Justice Bill is not diversion. A specific concern of his, is that if you go to the Court first, as opposed to having the matter being examined first by the Board; that that prejudices what true diversion is supposed to be. Those two (2) submissions are presented for our consideration.

**Ms. SHAWN RAINE BELLE:** Madam Chairman, in terms of the timelines both in the Child Protection Bill and the Child Justice Bill. They are in line with the international norms that are supposed to be applied in relation to the handling of these matters. They are designed to be dealt with in an expeditious manner and this is seen as being in the best interest of the child. It is for those reasons that the timelines are in there.

There are also based on models that have been approved by those said international entities and also several child protection and child justice experts. Those people would have been advising the Ministry in the generation of the policy that would have informed the Bill. That would be my response in relation to the timelines themselves.

**Madam CHAIRMAN:** Do the timelines presume or contemplate that there will be no further follow up?

**Ms. SHAWN RAINE BELLE:** The follow-up is built into the legislation itself. I do not know if he is speaking to the Child Justice Bill or Child Protection Bill, so it becomes a bit speculative but if you go through, in terms of the child justice aspect in particular, you have to understand the flow and I can see from your submission that you are not really understanding the flow from one stage to the next. When you are talking about the apprehension to moving to the assessment; all of that would constitute follow-up right until reintegration.

There are still relationships that are established with the secure facility in terms of facilitating that reintegration. If you understand the argument, the flow is the follow-up. I do not know if you get that. From the child protection point of view; the follow-up would be provided for in context by the authority and the Director and the court in issuing a number of the orders. All of that would facilitate follow-up as well as the child care centres. From that perspective, that is what constitutes the follow-up. There will be relationship between these entities and the child. Thank you.

**Madam CHAIRMAN:** Any questions or comments? Sorry, Senator Brathwaite.

**Senator Dr. the Hon. C. W. DaC. BRATHWAITE:** Thank you, Madam Chairman. I just wanted to make the observation that the letter presented by Mr. Hoppin takes a broad view of the social and economic challenges and difficulties that we face in some homes in Barbados and I think the point must be made that legislation alone cannot and will not resolve many of the social ills of our society. While it is true that we recognise the impact that these

social challenges have on our people, I think it is clear that what we are asked to do here is a narrow, small part of the total picture. Many of the issues that have been raised by Mr. Hoppin are clearly, in my view, outside of the scope of what we are asked to do today; but they are relevant to the development of the society and relevant to the issues that we face on an ongoing basis in our country and need to be taken into consideration somewhere; not necessarily in this particular setting. I just wanted to make that comment. Thank you, Madam Chairman.

**Madam CHAIRMAN:** Thank you, Senator Brathwaite. I think a number of the submissions can be summarised similarly; that the observations being made or the commentary being offered is very relevant and should be of concern but that they are not properly placed for treatment within the Bills according to the purpose of the Bills. Any other comments; observations or questions on this particular part of his submission? If not, we can move on to the question of diversion, which I personally find interesting as a policy first and foremost and his concern in particular as it relates to the process of diversion. Ms. Belle.

**Ms. SHAWN RAINE BELLE:** Madam Chairman, I will tackle this from a narrative perspective. I am going to go through and then we can discuss, so I am proposing that approach. Okay. The Child Justice Bill creates a distinctive system of child justice with specific positive, rather than punitive aims, designed to protect the rights of the child who comes into conflict with the law; covering the treatment of the child from the moment of allegation through investigation; apprehension; charge; pretrial period; trial and sentence. Parts 1 to 9 of the Bill are informed by reference to the OECS-model Justice Bill, which was endorsed by UNICEF, UN Women and other international agencies.

The Bill establishes two main stages in the child justice legal process; namely, the initial inquiry and the assessment before the commencement of any formal court proceedings against the child. The new features are geared at ensuring wherever possible, that children can be diverted from the formal court processes and addressed through diversion measures. It also facilitates the presentation of relevant information on the child and circumstances of the alleged offence.

The assessment is to be conducted by the Probation Department and the provisions for the assessment are provided for under Part three (3) of the Child Justice Bill. Parts four (4) and five (5) of the Child Justice Bill speak to the securing of attendance at initial inquiry and the conduct of the initial inquiry and diversion respectively.

Part five (5) of the Child Justice Bill speaks to diversion and in particular, Clauses 33-39. Now the diversion takes place in the context of the initial inquiry, which is a process before formal proceedings in a court are ever contemplated. They are indeed conducted by a magistrate.

Clause two (2) of the Bill makes it clear that the initial inquiry means a procedure conducted in accordance with Part five (5) which takes place after an assessment but

before trial in a court. It is also not regarded as a court procedure.

Clause 24 states that the nature and objectives of an initial inquiry is articulated in Clause 24 and I draw your attention to that Clause.

*Asides.*

**Ms. SHAWN RAINE BELLE:** Through you, Chair, Clause 24(1). You will see the shoulder notes stating "*Nature and Objectives of an Initial Inquiry*". It states:

*"An initial inquiry shall be held in respect of a child after an assessment is completed pursuant to Part 3. The appearance of a child at an initial inquiry before a magistrate shall be equivalent to the first appearance before a court, but it is not supposed to be regarded as a court procedure. The objectives of the initial inquiry are to establish whether the matter can be diverted before a trial, identify a suitable diversion option where applicable, provide an opportunity for the prosecutor to assess whether there are sufficient grounds for a matter to proceed to trial, ensure that available information relevant to the child, his circumstances and the offence are considered in order to make a decision on diversion and placement of the child, ensure that the views of all persons required to be present pursuant to 25(1) shall be considered before a decision is taken."*

*The persons who are to be present – child, parent, probation officer, prosecutor and other person sanctioned to be the magistrate – is set out in 25(1).*

*f) encourage the participation of the child and his parent or an appropriate adult in decisions concerning the child; and*

*(g) determine the release or placement of the child pending*

*(i) the conclusion of the initial inquiry; or*

*(ii) the appearance of the child in Court.*

*(4) An initial inquiry shall be held in such place as a magistrate may determine having regard to privacy and confidentiality.*

*(5) A magistrate shall conduct the proceedings in an informal manner by asking questions, interviewing persons at the initial inquiry and obtaining information.*

*(6) A magistrate in conducting proceedings in an informal manner pursuant to subsection (5) may seek the assistance of a social worker when asking questions, interviewing persons at the initial inquiry and obtaining information.*

From the get-go you recognise the change in the tone and atmosphere. It is to be informal; it is to encourage comfort; it is supposed to be problem solving and tailored specifically to the circumstances on in which the child is in.

**Madam CHAIRMAN:** Would that record be kept in the court system?

**Ms. SHAWN RAINE BELLE:** Madam Chairman, a

record will be kept in the sense of recording the proceedings but not against the child. You would have to have a record to refer to it in order to inform what the decisions are but not in the sense of being held as a criminal record or a record against the child.

**Madam CHAIRMAN:** For the avoidance of doubt, I understand you, but what we should be communicating back is that fact and that if there are any character references or anything that will follow subsequently, that initial meeting will not ....

**Miss SHAWN RAINE BELLE:** No, that is not because it is not a Court proceeding in that way. It is really a problem solving type of mechanism.

I will draw the Committee's attention to Clause 33 and as you said, it is Clauses 33 to 39 that speak to diversion. Clause 33 speaks to the decision regarding diversion. The magistrate can make that decision on taking the following into account: the recommendations of the prosecutor, the assessment of a report that would have been done in part three, the views of the persons present, and the persons present would have been the parent, attorney at law, an appropriate adult, any person who would have been sanctioned to be there; any information requested in Clause 27(2)(c), where the magistrate has discretion to ask for certain information and the willingness of the child to acknowledge responsibility for the offence. Where the magistrates emphasise that the matter may be diverted, the magistrate shall issue a direction for the diversion in the prescribed manner. Hence, this prescribed manner ... meaning in regulations that would have to be articulated and in addition the diversion options would be set out in Clause 36.

I am still drawing the attention of the Committee through you Madam Chairman, to Clause 34, which speaks to the purposes of the diversion. The purpose of diversion is to:

- (a) encourage the child to be accountable for the harm which he has caused;*
- (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 how the harm has impacted 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 stigmatising the child and the adverse consequences flowing from being subject to the criminal justice system; and*
- (e) prevent the child from having a criminal record. Therefore, again this is specific to the fact that it will not be recorded against them as a criminal record.*

Now, Clause 35 speaks to the child to be considered for

diversion, but specifically I will deal with Clause 36, which deals with the levels of diversion options. As stated: At the initial inquiry, a magistrate, in directing a diversion option in respect of a child, may direct a level one, level two or level three diversion option and in selecting the level that is appropriate for the child, a magistrate shall consider the

- (a) age and developmental needs of the child;*
- (b) background of the child;*
- (c) educational level, cognitive ability and the environmental circumstances of the child;*
- (d) proportionality of the option recommended or selected to the circumstances of the child; and*
- (e) nature of the offence and the interests of the community or society.*

*(2) A level one diversion option referred to in subsection (1) 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 three 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 three months;*
- (f) the issue of a positive peer association order in the prescribed manner in respect of a specified person in a specified place for a period not exceeding three months;*
- (g) the issue of a family time order in the prescribed form for a period not exceeding three months;*
- (h) the issue of a good behaviour order in the prescribed form;*
- (i) the issue of an order prohibiting the child from visiting, frequenting or appearing at a specified place in the prescribed form;*
- (j) referral to counselling or therapy for a period not exceeding three months;*
- (k) compulsory attendance at a specified place for a specified vocational or educational purpose for a period not exceeding 5 hours each week, for a maximum of three months;*
- (l) symbolic compensation to a specified person or an institution; and*
- (m) restitution of a specified object to a specified victim of an alleged offence where the object concerned may be returned or restored.*

*(3) A level two diversion option referred to in subsection (1) includes*

- (a) the options referred to in subsection (2), except that the*



maximum periods referred to in that subsection, shall for the purposes of this subsection, be six months;

(b) compulsory attendance at a specified institution for a vocational or an educational purpose for a period not exceeding 8 hours each week, for a maximum of six months;

(c) the performance of some service without remuneration for the benefit of the community under the supervision or control of an organisation, institution, or a specified person or group identified by a probation officer effecting the assessment, for a maximum period of 50 hours, and to be completed within a maximum period of six 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; and

(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.

(4) a level three diversion option referred to in subsection (1) includes

(a) a referral to a programme which does not exceed six months and which has a residential requirement that must not exceed 35 days in total and 21 consecutive days during the operation of the programme;

(b) the performance of some service without remuneration for the benefit of the community under the supervision and control of an organisation, institution, or a specified group of persons, identified by a probation officer and for a period not exceeding 160 hours which shall be completed within 12 months and no more than 35 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 six months and no more than 35 hours per week; and

(d) referral to counselling or therapeutic intervention in conjunction with any of the options listed in this subsection."

Those are the three levels of diversion. As you can see Clause 37 speaks to minimum standards of diversion and diversion options. The diversion options shall promote the dignity and well-being of the child, and the development of his self-worth and ability to contribute to his community not be exploitive, harmful or hazardous to the physical or mental health of the child and be appropriate to a child's age and maturity and not interfere with the education or schooling of the child and the Chief Probation Officer shall keep a register of all children who are subjected to the diversion options.

It also deals with the failure to comply with the diversion option which is spoken to in 38 and the option that the magistrate may do in terms of enforcement may be applied the same diversion option with altered conditions, apply another diversion option or issue an appropriate direction

that will assist the child and the family to comply with the diversion option. Clause 39 then deals with the empowerment of the Minister to make specific regulations to deal with deal with diversion options.

So, as you can see diversion is dealt with in extreme detail as to how it is to be rolled out, executed and performed and therefore it would not be true to indicate that it is not dealt with and it is not tailored to the child's needs and even though it is dealt with by a magistrate it is within the context of the initial inquiry that it is not regarded to be the court proceeding, The magistrate is obligated to conduct it in an informal way and to speak the questions and if he needs a social worker he would include it in. It is all designed to problem solve and see what would be the best approach in dealing with the child in terms of his conflict with the law, his responsibility to society, as well as the development of himself in terms of reintegration and rehabilitation of the child.

#### Asides

**Ms. SHAWN RAINE BELLE:** I am sorry. I have not finished my presentation so I was saying if I could finish my presentation I would be grateful.

**Madam CHAIRMAN:** Continue. Retain the questions.

**Ms. SHAWN RAINE BELLE:** As indicated, Part 10 deals with the secure residential facility and Part 11 deals with the reintegration facility. All of those are dealt with by reference to Canadian Legislation and the specific guidelines that are dealing with the minimal rules for administration of justice: UN Convention on the Rights of the Child; UN standards on Minimal Rules for administration of Juvenile Justice; UN Rules for Protection of Juveniles deprived of their liberty and UN Guidelines for the Prevention of Juvenile Delinquency.

To answer the question about whether there was involvement of expertise; just to indicate that the Ministry retained a legal consultant whose background had to do with the OECS and UNICEF with a specific emphasis on her work with social justice work; with child protection; with child justice, in particular.

In terms of her work as well she would have done a situation analysis that would have dealt with juvenile crime trends as it relates to Barbados and a gap analysis of the Juvenile Justice system *vis a vis* international best practice. The purpose of the consultancy was then to design systems to address the Child Protection and Child Justice mechanisms systems.

There were a number of stakeholder meetings from 2013-2023 and these stakeholder meetings involved the Probation Department; Government Industrial School (GIS); Criminal Justice and Research; Magistrates; Police Service; Registrar; Registration Department; The Child Care Board; NCSA and other Ministries touching and concerning the issue. The UN was involved on several levels and the Child Protection expert, Ms. Heather

Stewart, was also involved.

As you can see there was an extensive effort to engage stakeholders and experts in relation to the particular Bills and specifically, Child Justice. Thank You.

**Madam CHAIRMAN:** Thank you, Mr. Prescod.

**Mr. T. A. PRESCOD:** I got the impression along this presentation and I am sorry that I missed the early part of it but I just picked up the paper on a submission that was forwarded to us and I am looking to see who the submission came from but apparently the person put on the table for discussion a distinction between diversion and evasion and I would like us to be extremely clear on what is the perception of the person who is responsible for drafting or even the intention of the person who made the submission. What it is he is really trying to say and if it is a necessity for us to have some explanatory or some definition of the two different terms at least for the clarity of the actual Bill itself or a clear definition of what are the terms even if we do not take into consideration the other one and there is also a suggestion, that making reference to the two terms, that although it says that the Board is supposed to be responsible for making a judgement on the seriousness of the particular offence; the person seems to be concerned about the records being retained by the magistrate himself and I do not know what is your view that is troubling the person who is submitted the document?

I do not want it to be a case where I cannot see and I do not know if all others can; what it is he is trying to say and I just want to know, since you and your team would be the persons drafting the legislation, if you consider the submission one of any validity that would affect the comprehensive nature of the actual Bill itself.

**Ms. SHAWN RAINE BELLE:** Madam Chairman, through you so I would have made a lengthy explanation of what diversion would be but basically the concern is that you are engaging the court in the circumstances or concepts where you are dealing with a child. As I explained, the Bill has steps from the apprehension; to assessment; to initial inquiry; to court procedure; to sentencing; to detention; to reintegration.

The element dealing with assessment and the initial inquiry are two (2) very new steps. Within the initial inquiry, which is regarded as a procedure that is not a court procedure but a procedure that engages the magistrate, yes but the way that he is supposed to engage, is specifically dealt with in Clause 24 to act in a way that is informal, that is child-friendly which engages the parties so that then he can make a recommendation into diversion which is basically, the tailor-made level one (1) to two (2) to three (3) options that will be designed to address what the child has done but to call upon him for accountability and for rehabilitation.

The process does not involve any record against the child and that was expressly said. I went through the trouble of even speaking to it in Clause 34 where it specifically says that the diversion is to prevent stigmatisation of the child and the adverse consequences following from the subject to the criminal justice system and prevent the child from

having a criminal record.

I went through the process of explaining the level of consultation that would have taken place in relation to the Bill, including the retaining of an expert; a legal consultant, whose job was to assess the situation in Barbados and to do a gap analysis legislatively into what was the legislative status and then to come up with a recommendation. That was done in a situation analysis.

Madam Chairman, that situation analysis would have put forward a model Bill which would come out of the Organisation of Eastern Caribbean States (OECS) and was endorsed by the United Nations Children's Fund (UNICEF) and other international organisations.

That Bill then went through a systematic discussion that would have informed the drafting of this Bill. The members or the persons who were involved in that process through several stakeholder meetings that took place from 2013 to 2023. I think I am the only person who would have been a common person through that.

I have been a drafter for 20 years and that covers half of my experience. It involves the Probation Department; the Criminal Justice and Research Department; the Magistrates; the Police Service; the Registrar with the Registration Department; the Child Care Board; the National Council of Substance Abuse (NCSA); other Ministries touching and concerning the issue and UNICEF as well as other child protection specialists like, Ms. Heather Stewart; all of them would have been involved in the discussion of the Bill. It would not be accurate to say that there was no stakeholder participation by experts in the field or persons who would have been rightfully regarded as stakeholders in the legislation.

I myself, was involved in the legislation and would have drafted it through its whole; from infancy until now and I am a drafter with 20 years of experience. That may not be as old as everybody may be in here but it is not experience to be thwarted or laughed at. Just saying. Thank you!

**Mr. T. A. PRESCOD:** Madam Chairman, let me make it very clear. I do not question your capability on anything, so I do not want it to be implied that I am. As a matter of fact, sometimes I am so impressed with the level of your capacity in relation to the law. What I was concerned about is whether we have a mechanism in place, that when the revolutionary changes are drafted that can guarantee us that the magistrate would not practise the handed down approach to jurisprudence that they are accustomed to.

When we make these changes, they will make that cultural adaptation that can be applied where the magistrate should be able to respect himself and a table as an equal with a social worker; a psychologist; and do not apply that heavy-handed approach. I tend to believe that you are trying to address our own sociological conditions in Barbados and in the Caribbean itself. There is precedence that have been set by cultural practices that magistrates might be so accustomed to that they believe it is almost a God-given right for them to behave in a specific way. I have seen it in other administrative roles that people play who believe that

they can say what they want to say and that all the other persons around do not matter because this is what a magistrate is accustomed to doing.

I know we are trying to create a different kind of environment and, as I said, I respect you a lot for taking all of those things into consideration. I have had conversations with you on these matters so I just would like to see if these things are to go beyond paper; that we have a mechanism for specific training for the transition of the attitudes that we are accustomed to, which I do not appreciate but we are accustomed to; so that we would make sure that this approach has the required and the intended effect that we are dealing with here; what we are dealing with in Parliament and what the group earlier that met intended to see happen in terms of practice.

**Ms. SHAWN RAINE BELLE:** Madam Chairman, through you, just to say that you would note that the Act does not come into force until the date fixed by proclamation. That is the device used so that it would give the Ministry time to make certain adjustments and those recommendations that you are contemplating because a number of different entities would not be literally transformed and affected by this piece of legislation.

It is an ambitious mechanism that we are trying to put in place and so it would require training and I am sure that but this is not something that I can do but certainly the time before proclamation would give people the opportunity to put the mechanisms in place to prepare for the launching of the piece of legislation, including Regulations that would be then there to operationalise the minutiae of how this legislation is supposed to work. I do not know whether that is an appropriate response to your question.

**Madam CHAIRMAN:** That taken alongside the concern that was raised last week, that the users, as well, would have to be sensitised as regards these new provisions.

**Ms. SHAWN RAINE BELLE:** Yes, Madam Chairman.

**Senator J. A. KING:** Madam Chairman, I want us to go back to the levels of diversion options at Clause 36. Understanding the society within which we live and I really need you to help me with this because I am having a little difficulty with it. It says here "age and development needs of the child". Then directly underneath that it says, "the background of the child".

In a society like this which is very class-conscious I have a fear and I might be misinterpreting it, so I am asking you to help me but when I go down and I see at letter C, "educational level; cognitive ability and the environmental circumstances of the child". Those things to me, cover everything that I should want to know about this child.

When we go back now to the background of the child. If you interpret background to mean which class of the society this child comes from and a case arises where a child is then given in the public's eye, a pass based on whatever else it is; I feel like this whole idea of the background of the child is almost like a loophole that is present within the language. I would need you to help me understand it because as far as I am concerned, all of the

other areas that are mentioned fully cover, to me, that level for the diversion.

**Ms. SHAWN RAINE BELLE:** Madam Chairman, just to explain. This is to meet with a trend in terms of the decision-making of judges and magistrates. You have the sentence or the remedy or the level of option presented but you want to be able to make sure that you take into account all the necessary information, in order to tailor that specific punishment, remedy and so on, level option, to what happened in the circumstances.

Those circumstances include the background of the child. Those things inform the design of the punishment as proportional to what was committed; so it should not be seen in a negative light. It is actually supposed to operate in a mitigating way but also making sure that you take that into account in holding the person accountable.

This is a decision-making model that has been taking over in recent times and so you will see elements of that in our Penal Reform Legislation where, with certain offences, the judge would have the opportunity to take a number of different factors into consideration when tailoring the appropriate sentence that needs to be imposed, so it is not unusual. It exists in our legislation right now. It should not be seen in the negative and in fact, it is really supposed to be tailoring the proportionality of the punishment; the sentence or order with the circumstances of the crime and the person involved.

**Senator J. A. KING:** Thank you but I still have a problem with it because as you quite rightly said, all of that particular information that you need on the child is likely going to come from the Probation Office; it will be there if the child came before the court before; all of that is already there, so you have it. You state it even here. For me to say now that I want background information, which is already in the provisions here; it still makes me feel a bit uneasy because if I were to say, per se, that this child X has a particular background and this child B has a particular background and they have committed the same offences or created the same problems but for some unknown reason, child B gets the diversion while child X gets to go to court.

Taking into consideration all of these things, the level of the education and so on, you have in your language the word "background" and in a cultural context of how people interpret these things, it can lead one to believe that there are two (2) approaches or two (2) types of justice. That is my only fear; not that I believe that is what it is but I am just putting it on the table. When the general public hears things like this, if you do not explain it to them properly, the first thing people will say is, "*You want to check the background because you want to see if this child....*"

I will talk now: We had a situation some years ago where some young men were caught or found behaving in a manner that was not necessarily the best by the Gymnasium. They found themselves at the Government Industrial School for, if my memory serves me right, no more than two or three days. It was a big furore among people because no one could understand why on this

particular occasion, understanding what had taken place – use of firearms – that these children got to leave and others with lesser things were still in there. This is the society within which we live. We have to be extremely careful as to how people view, especially with the diversion, in the language that we use. Again, like you, I have over 20 years in that environment.

**Ms. SHAWN RAINE BELLE:** Madam Chairman, just to emphasise that, as I said, it is a decision-making trend that has been happening over the years to take into account not just the bare bones of the offence and in terms of what happened but also the circumstances of the person who committed it. In order to tailor the most proportional punishment within the parameters that the law sets, I think there is also a need to restore confidence in institutions. This may be a kind of unpopular view yet I need to say it. If you do not have confidence in your institutions, what are we doing here?

Magistrates and judges have certain training, including the jurisprudence that would speak to sentencing and they are bound by these things. If they do not adhere to it, you can be appealed. I can tell you that having many appeals against your decisions is not a good look. I am just saying that there must be some confidence in your institutions. The fact is that the Bill is revolutionary in its orientation of addressing a long-founded; long-known problems with the current system and making the effort to change it. You have to give the institutions the opportunity to rise to the occasion. Thank you.

**Senator Rev. Canon Dr. J. A. ROGERS:** Thank you, Madam Chairman. My question is not so much about what Senator King would have raised and I rather enjoyed his presentation; but Article 38 in the Child Justice Bill notes that where a child fails to comply with diversion option, a magistrate shall, on being notified of such failure, issue a warrant for the apprehension of the child or a written notice to the child to appear before the magistrate. I was wondering where is the parent in all of this? Do we write directly to children?

**Ms. SHAWN RAINE BELLE:** Madam Chairman, again, if you understand how the diversion fits. The diversions fit within the scheme of the initial inquiry and what would have been articulated in the provisions before the persons who are required to be present would be a parent who would be part of the 'appropriate' adult, and all other persons who are required to appear. Those persons would be notified in this situation but the fact of the matter is that the diversion option would have been not complied with so you have to bring the person before the magistrate to make an assessment of how you are going to address this situation.

In reading legislation, you cannot take one provision in a vacuum; they are related to other provisions. This would be read in conjunction with the provision that speaks to the persons who ought to be at the initial inquiry. Thank you.

**Madam CHAIRMAN:** Senator Rogers seems satisfied. I

understand and I mean I totally understand, the explanation. I do not know if it is that it is legal framing or it is consistent with legal framing but to say that a written notice is sent to the child; as opposed to the child and his parents or a child and the appropriate authority or whatever and it goes back to Mr. Hoppin's concern, that these things being so legalistic can leave ground for attorneys, not that I am speaking only to attorneys but people representing specific interests, to say well we spoke to the child and the law says that Section 38 (b) that a notice has to be sent to the child, we did not have to send it to any parent.

There are some children that might be forward enough to decide they are going to handle it, especially those that may be closer to 18 years old and so on.

**Ms. SHAWN RAINE BELLE:** Madam Chairman, again, just to say, you still have to connect the earlier provisions with this. Mind you, lawyers would want to argue several things. The problem is that you butt up with precedent; against jurisprudence in terms of the interpretation of the legislation; the magistrates themselves and in making those decisions they have to get past those gatekeepers and those are the gatekeepers that prevent you from making arbitrary decisions. I am just saying that you need to keep that in mind. Thank you.

**Madam CHAIRMAN:** As a layman and sometimes dunce too, there is something that always stirs at the back of my mind out of an abundance of caution and for the avoidance of doubt because if certain things are made clear then you do not have to interpret them. I mean, what will be the danger in making that Section a little bit clearer.

**Ms. SHAWN RAINE BELLE:** Madam Chairman, it is not that you do not want to make it clearer; it is just that law is understood in a particular way and the thing is that one of the things that keep coming up is that, '*no it should be this and should be that*' and you are not really understanding that the same way that there are conventions that speak to the drafting of a manual, are the same conventions that apply to the law and it has to be written in such a way so that it would have judicial notice.

It has to be written in such a way as it regards the jurisprudence that was before. It has to be written in a way that if it is based on the model then that has to be done. Certain conventions are codified, so within our context some of them are codified in the Constitution; some of them are codified in the Interpretation Act and some of them are codified in the Law Revision and Law Reform Act.

They apply in relation to the legislation and also within the common law and all of these things are gatekeepers for how these things are interpreted. You cannot just pick it up. It is not creative writing. It is as disciplined as mathematical formula. For instance, the construction of an offence; you must have the behaviour identified; you must have an expressed prohibition that classifies that behaviour as a crime and then you must also have a sanction. That is a formula and it is the same way in writing legislation and this is based on a formula. I am just

drawing that to your attention. Thank you.

**Madam CHAIRMAN:** Members of the Committee any further comments? I am happy with the explanation.

**Senator J. A. KING:** Madam Chairman, like you I am happy but it places in my mind more and more that there is need seriously before this Bill is passed, to really educate the wider public on a lot of what we call the legalistic jargon and what these things mean. I do not think you are going to have to do all of it but there are just some specific things that just like the same way as I mentioned earlier, looking at what idea background and these different things; there are some things that we are seriously going to have the need to explain these things a little bit more.

For luminary minds like yours it is fine but at the end of the day, perception is more deadly. I can use that term in that the reality of things and if people perceive things in a certain way, their whole manner of behaviour and everything is guided on the perception, and so we need to make sure that people perceive these things in the correct way.

**Madam CHAIRMAN:** Before you come in Ms. Belle, I am hearing the Deputy Chairman strongly because I can almost see certain groups now just protesting this and just thinking through a political lens on the basis of a number of recent happenings. You can see now, see this is about the rights of the child but the parents do not have rights anymore and those kinds of commentary that will complicate the issue. Senator Rogers might want to weigh in before you respond.

**Senator Rev. Canon Dr. J. A. ROGERS:** Thank you Madam Chairman and Ms. Belle. The reason I really raised it was that, we have this thing about the rights of the child and the rights of parents, but there are responsibilities as well and I think that the parents should be responsible for the child.

#### *Asides*

**Senator Rev. Canon Dr. J. A. ROGERS:** That is why I really raised it because I am saying that the child is a minor and has committed an offence but where are the parents in all of this and where is their responsibility in making sure that the child gets to where it should be.

**Ms. SHAWN RAINE BELLE:** I do not want to be perceived as not caring about what is being raised. What I can do in the context because there are certain interventions that need to be made any way. I can modify the language and so that it is clearer as to the responsibilities. Some of that can also be done by references, so that I can have it confer back to earlier provisions. I can do that but I would have to take time to actually deal with that.

Just to say, in other jurisdictions for instance, in the United Kingdom (UK), when they had the roll out of the Data Protection Legislation. There are hundreds and hundreds of manuals that go into how this legislation works and what are the forms that you have to use and all manner

of guidance documents.

Barbados has never been minded to do that but that has to change because a lot of information is available but that does not mean that you understand the information. You need to have someone willing to write manuals in terms of guiding the understanding; even in relation to navigating the Bill from apprehension to integration. People understanding the various stages; their requirements; the rights that they have; the responsibilities that they have, all of that has to be articulated.

Those things are not done by CPC but they have to be done somewhere, so that culture of explanation of publishing guidelines and explaining to people that needs to become a part of how we operate going forward. Thank You.

**Madam CHAIRMAN:** Senator Rogers.

**Senator Rev. Canon. Dr. J. A. ROGERS:** So then it would be accurate to say that Mr. Hoppin's concern would be more one of policy of the various institutions involved rather than the legislation itself.

**Ms. SHAWN RAINE BELLE:** You could see it that way. I mean. I think some of it is rooted in not really appreciating the stages. Some of it is armchair examination of certain things and hearing certain vogue terms and so on. Some of it is rooted in genuine concern which is why I went to the trouble of being as detailed as I was to explain what informs the approach that was taken legislatively. As for the other concerns, while valid, I cannot address them because they are not legislative; they are no legislative mechanisms to deal with that. I cannot change an attitude by passing a law.

**Madam CHAIRMAN:** I am thinking past these discussions and I am thinking to when we are, one (1), ready to debate the Bill fully in the Lower House and the Upper House and I am thinking too as well, for when we reach the stage of sensitisation, both of officials and users, Mr. Hoppin's specific concern, was that if diversion is to be a true policy of diversion, then an appearance should be made first before the Board. He removes the magistrate and he is saying that the Board should be made up of Probation and Social Welfare Officers; a psychologist and a couple lay members of the public.

We have the composition of the Board already outlined or there is a proposal for how that structure is to take place. The question that I would want us to consider and to be satisfied with, is although we accept the explanation that according to the relevant sections that were highlighted, Parts three (3); four (4); five (5), particularly in Part four (4) and five (5), where we see that the magistrate may have for instance, a social worker and so on and we accept the explanation that his initial intervention is supposed to be an informal one; if there is any place for widening that initial intervention, to assure that the process is in actual fact as informal as it is intended. Instead of saying '*may have a social worker*', the magistrate has the responsibility but that a list of other persons is also included or instead of '*may have*' ... I do

not know. Those words 'may' and 'shall' always confuse me; if it 'shall' or something like that, and that the Chairman of the Board is there whether, that is implied or so on. If there is any way to explain or detail further to address that concern of his that was raised.

**Ms. SHAWN RAINE BELLE:** Madam Chairman, that comes to the model that was utilised in terms of the approach informing the legislation. In the legislation, the Boards that are involved, I think this is the Child Care Board, within the context of the secure facility; that is supposed to direct the policy and advise the director of the secure facility. That has nothing to do with adjudication in that sense. The other Board is the Reintegration Board that deals with the early release of the child back into the society.

The model would have been basically setting up the particular stages and the model recommended the assessment that is done by the Probation Department and then the initial inquiry which is done by the magistrate but in order to facilitate the non-court proceeding aspect of it, it is indicated that the magistrate or imposed upon the magistrate the responsibility of making sure that the procedures are informal and then you involve the relevant persons needed in order to make that process as comfortable for the child, because at the end of the day, when you look at the principles of administration as discussed earlier, it is supposed to be tailored and child friendly.

Just to indicate about 'shall' and 'may'; that is again, a convention that is actually codified in our law, in the Interpretation Act, so that 'may' is discretionary and 'shall' is mandatory. Thank you.

**Madam CHAIRMAN:** That is how I understand it but in another place sometimes when it is used it sometimes sparks all kinds of debates so I am happy to hear that particular explanation that I can refer to the Interpretations Act. Senator Brathwaite.

**Senator Dr. the Hon. C. W. DaC. BRATHWAITE:** Thank you, Madam Chairman. I raised a question earlier which I think is relevant to our discussion but I did not get a reply. I am still a little bit worried. It is my impression that there were plans to establish a Family Court in Barbados? I asked that question but I did not get a reply and I want to know if I am wrong; if it is something that is contemplated; if it is something that has been done; if it is something that is going to be done because these issues of cultural change that we are talking about, in the management of law and the management of relationships have a lot to do with the emphasis of family court where conciliation; diversion; mediation are more relevant than the criminal court, for example. Is a Family Court part of our agenda or is it not? I do not know. I am just asking a question.

**Madam CHAIRMAN:** Yes, and I did hear it as a direct question but I had intended to comment on it because it was announced earlier this year as a definite intention for implementation and at that time, it was stated that it can be

introduced as early as next year so it is not something that is in place but it is something that is intended to be in place as early as in 2024 because it was said it can be introduced as early as next year and there are some things that would have to be forerunners to that introduction.

**Senator Dr. the Hon. C. W. DaC. BRATHWAITE:** Thank you for the explanation, Madam Chairman.

**MADAM CHAIRMAN:** Any other questions? I thought I had seen Mr. Prescod earlier.

**Mr. T. A. PRESCOD:** I was trying to shield the drafter from some concerns. I just wanted her to know that I certainly do not perceive for her as absolute and responsible for putting all of the mechanisms in place and for sealing all of the open spaces in the law because if all of that should happen then we would need less lawyers in the society than we have. I did see also that Mr. Hoppin began to question if it was a philosophical or social-psycho approach, when it should be the legislation itself and in some cases it would guide you but most of it comes as a consequence of not only the drafted legislation but also the case law that might also follow legislation. If the lawyers do not reach that level and if the parliamentarians when you send a Bill before Parliament believe that they are just supposed to throw a few dry material facts on the table and that is what has happened in most cases, including in this legislation, they just say a few things.

The examination of these two (2) Bills now and the amount of energy it is taking out of us; certainly tells us that sometimes we are not doing the kind of job that we ought to do at the level of Parliament. I have seen it and that is why I am saying this to you. I have seen it in Parliament where a lawyer went extensively on explaining the legislation and then others get uncomfortable and wondering why he is wasting all of this time on it but at the end of the day we have to reach the people in the explanation. If the presentation itself is weak then the public begins to question the legislation.

I do not know if the presentation might be weak because the particular parliamentarian might not want to go as far, but the experience which we have had out of criticism is probably not even criticism that derived from what you have in the legislation; should tell us that we now have to go a little further. We cannot take the public for granted that if we are bringing this legislation that that is all.

It is an embarrassment to Parliament; it is an embarrassment to the Government and it is an embarrassment to all the people who made an input. I want you to feel comfortable that I believe that you have done a lot of work, especially in this particular legislation and that what we are doing here is fine-tuning the legislation so when we get back to Parliament again on the debate, we should be able to hear wider perspectives on this and at least we hope that we would be able to give some satisfaction to all the concerned persons; not only Mr. Hoppin. There are lots of concerned Barbadians about this

Child Protection Bill and the Child Justice Bill itself.

I want you to feel comfortable that when we probe we are not probing because we believe that the legislation has not been done thoroughly, but we are fine-tuning it and rest assured that I have great respect for the manner in which you have actually done this. As a lone-ranger here, everything that we asked, you have given an answer that is very, very satisfactory to most of my colleagues that I have spoken with, and to me, for sure.

**Ms. SHAWN RAINE BELLE:** Madam Chairman, just to respond to the philosophical underpinnings of the legislation. This is why it is so unfortunate that the dismissal of the international conventions is an area of concern because they provide the philosophical underpinnings. I will just take an opportunity just to go through some points.

The Convention on the Rights of the Child, for instance, indicates that State parties recognise the right of every child alleged as or accused of, or recognised as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth which reinforces the child's respect for human rights and fundamental freedoms of others and takes into account the child's age; the desirability promoting the child's integration and the child's assuming a constructive role in the society. That is a philosophical underpinning of the legislation.

In terms of the United Nations (UN) standard for minimum roles for an administration of juvenile justice; the major underpinnings would be the use of diversion from formal hearings to the appropriate community programmes; proceedings before authority to be conducted in the best interest of the child. The specialised training for personnel dealing with the juvenile cases; the use of deprivation of liberty as a measure of last resort and for the shortest possible time and the organisation and the proportion of research as a basis for effective planning and policy formulation.

In relation to the United Nations' roles for the protection of juveniles who are deprived of their liberty; their principles would be that priority be given to speedy trials to avoid unnecessary retention periods; that children should not be detained without valid commitment orders; small, open, facilities should be established with minimum security measures; deprivation of liberty should only be as a measure of last resort and also to promote activities in programming, dealing with health, self-respect and responsibility of juveniles. Food should be suitably prepared and there should be access to drinking water. All of that would be seen in the secure facility as part of the legislation. Detention facilitates should be neutralised to facilitate contact with family members and children should be permitted to leave the facilities for visits with their family homes and all of that is dealt with in the Secure Facilities Legislation as part of the legislation.

Education should take place within the system and the Juvenile Justice Personnel should receive the

appropriate training within that context and qualified independent assessments be made. There is the United Nations Guidelines for the prevention of juvenile delinquency: these guidelines called for the decriminalisation of status offences which was done so that the repeal of the Reformatory Schools' legislation which contains all the parts about the wandering and all of that, that has been done away with completely.

As you can see, those particular agreements should not be seen in this nefarious way but actually provide the underpinnings of the legislation; philosophical underpinnings of why this legislation has been done in this way.

Madam Chairman, I cannot remember now because it was so long in the explanation, but this is my way of reaching out to you in the sense of explanation. What I will observe is that there is a superficial reading of legislation and when it mentions references to things you have to go back to and look and read. Reading is not easy. Even one of the submissions talked about the fact that they have these varying ages that seem to conflict and I had to go into detail about how I had included a Schedule in the Bill that seemed to be dealt with almost as if it was decoration but in fact, went to the trouble of recognising that the enactments were amended, in order to facilitate the change of the conception of child as a person under the age of 18.

All of that was ignored because you simply read it, but law is not a postscript or a stamp. It has implications for people so you have to take the time to read it but I will concede that you need to also have a form of explanation. How that is supposed to be orientated, that is a different issue. I am a technician who is supposed to operate within the construct of the Parliament and in relation to the Ministries and the Cabinet and so on, but I cannot operate as a person who advocates on behalf of the legislation because I am not a Public Relations Technician; that is not my job.

My job is to explain the approach, so that those people who are responsible for that need to step up. If it is that there is need for assistance on a deeper level, I have always been willing to guide but there are limitations in terms of the parameters. I take this opportunity because this is the only place where the Chief Parliamentary Counsel has an opportunity to explain the approach. We cannot just go out into the public and talk with public servants. Thank you.

**Madam CHAIRMAN:** Senator Brathwaite.

**Senator Dr. the Hon. C. W. DaC. BRATHWAITE:** Madam Chairman, I am very pleased to be exposed to some elements of legal education and to get some input into some of the things that I do not always understand about the law. I am also pleased to hear of the philosophical underpinnings of this legislation; how it relates to the international context and also in the context of Barbados. While the explanation was being given, it occurred to me that there is need for specific underpinning of this



legislation in the context of Barbados and I feel that there is room first to ensure that whatever legislation of this nature we consider, has as a fundamental underpinning the strengthening of the family. We have noted many situations in which the traditional family linkages are breaking down. We have seen many situations: children against parents; parents against children; conflict; difficulty; animosity and so on. I see a fundamental underpinning on all of this as an attempt to strengthen the family.

That was why I asked about the Family Court and whether it is coming because it is an important element of what we face today; where the traditional institutions and – with all due respect – the Church, for example, does not seem to be playing the role that it used to play. I remember in the good old days that we had to go to Sunday School and it was compulsory, at least as far as my parents were concerned; you had to go.

Now these things have gone by the wayside and we need to strengthen the family again, so I see that as an important philosophical underpinning that should be at the base of legislation of this type. Those are just some preliminary comments, Chair. Thank you.

**Senator J. A. KING:** Thank you, Madam Chairman. I want to go back to Mr. Hoppin's submission. I want to say although I do not particularly agree with all of what he is saying, I understand fully where he is coming from and why he would say some of the things he has said. I just want to put it to this Chamber that maybe, a compromise where the child coming before a magistrate could be made, in that the Board itself along with probably not the magistrate but maybe one of the prosecutors or officials within the judicial system – I do not know what you would call him or her – who can inform the magistrate and then that report which comes from the Board and these other persons can be given to the magistrate who then in the privacy of his own Chamber, away from everyone else, can say either "yes, this can go to diversion" or "no, this needs to go another route".

You have to understand that you are dealing with children. When a child goes in front of a magistrate, you are before a magistrate regardless of whether it is in the physical court building or in Broad Street. It is a magistrate and it conjures up a particular mindset about the whole process itself. I know that if a magistrate sees me on the road, he can tell me anything he feels but he cannot sentence me to anything unless he gets me inside of the court itself but in the court of public appeal, none of those things make any sense.

A record is a record is a record in the public domain, and you are correct when you said that you are not responsible for the public relations part of it but I think the importance of the public relations part cannot be understated because again, having worked in the system for a while myself, you will see children in the Government Industrial School. It says clearly "Government Industrial School"; it never said "small prison"; "lock up" or any of

those things but the general public and even when I listen to some people who should know better, refer to it in a manner as if it is a prison which, by no stretch of the imagination, it is.

I am concerned. Like I said, I do not necessarily agree with a lot of what Mr. Hoppin is saying here; but I fully understand why he would say that and he would not be alone in his assessment of these things. If we take what he is saying as a person who, I believe, has also been a social worker, it is plausible to assume that the thinking among a wider section of people is the same and it would be something for us to seriously look at and not just overlook. I just want to put that on the table.

**Ms. SHAWN RAINE BELLE:** Madam Chairman, just to indicate that that then would require a third Board to be established. As I indicated before, the Child Justice Board deals with the advising of the Director in the running of the secure residential facilities and the Reintegration Board deals with the early release. That would mean then that you would have to establish another Board that would be dealing with the diversion coming out of the assessment.

Now, the model deals with the magistrate because the magistrate does deal with it now and in a sense it is in appeasement to the current position but making sure that you give guidance to the magistrates as to how they ought to be. That is why the Bill then goes into great pains as to how these things should be conducted and the fact that there should be informality; who should be there; what persons or expertise should be retained as such that is how the model is constructed.

What you are suggesting Senator King, is a departure in terms of policy. That is a matter that needs to be to be addressed with the substantive Ministry which would be the Ministry of Home Affairs and Information. That would have to be discussed with them and they will give me the instruction as to how to draft from there. Thank you.

**Madam CHAIRMAN:** We also have the opportunity when there is examination of the oral presentations, to get further insights on this particular area of concern from the Bar Association and also from the Probation Department. The Probation Department will be in the area of social work as well and they were also intricately involved in the work towards this Bill. All of these concerns can be fed back to the intended parent Ministries for the respective Bills.

I do think that it is something worthy of further exploration when we have those interventions with the agencies. I recognise Mr. Prescod.

**Mr. T. A. PRESCOD:** Madam Chairman, for a considerable time the Barbados Government committed itself to having a monument in a central location, featuring all the tenants of the Convention of the Rights of the Child. I know we passed legislation but children who at least reach a level where they can comprehend, those children do not even know what are these prescribed rights in the Convention of the Rights of the Child in Barbados. I



believe that coming out of these discussions, I know we are dealing with the drafting but we do not understand things in law; the children are unaware of what these rights agreed upon at the international level to the Convention of the rights are and we need to still apply some corrective measures in areas where we are guilty of not honouring our commitment to these Conventions.

Another thing I would like to ask here. Is the Convention binding on countries who sign on to the Convention? I am going to finish the question now. As you indicated, the Convention is the philosophical principle that undergirds the statutory provisions. Are the statutory provisions in the rights of the stratification of the law? Does statutory provision hold a stronger legal status than the actual Convention itself?

**Ms. SHAWN RAINE BELLE:** Madam Chairman, we would have spoken to the status of Barbados in an earlier presentation made by Mr. Hutson Inniss. The Convention on the Rights of the Child, Barbados signed on to that Convention on the 19 April, 1990 and ratified the Convention on the ninth of October, 1990.

When a state ratifies one of the international rights conventions, it assumes the legal obligation to implement the rights recognised in that treaty. Through ratifications, States undertake to put in place domestic measures of legislation compatible with their treaty obligations. The objective of stating the above is basically to say that Barbados was committed from the 1990s and the Bill only recognises the further commitment to those obligations. I am going to reiterate parts of my presentation because I feel the need to do that. That being said, Barbados is a sovereign state that has the right to enter reservations on a Treaty. A reservation is a declaration made by the State by which it purports to exclude or alter the legal effect of specific provisions of the Treaty in application to that State.

A reservation enables the State to accept the Multilateral Treaty as a whole given it the possibility not to apply specific provisions which it does not want to comply. The reservations can be made when the Treaty is signed; ratified; accepted; approved or acceded to and specifically Article 51 of the Convention on the Rights of the Child, made provision for the reservations to be made at the time of ratification or accession but Barbados at the time did not have any reservations. Article 53 of the Convention of the Rights of the Child is where the state may denounce the Convention.

That would happen with its concomitant consequences, but if it were, for instance, that the characteristics of the Convention changed and they then go into a Protocol, that is what would be considered to be an amendment to that Convention. Barbados as a sovereign State would have the right to enter a reservation, unless it is that Protocol then does not make provision for that type of reservation in which case then you would not sign it. That has to be understood in terms of the rights of a State, in terms of considering itself bound but when you sign the obligations and flow.

I think I am forgetting some other part.

#### *Asides*

**Ms. SHAWN RAINE BELLE:** Sorry, I think I wanted to speak to the other aspect. I would note that you had spoken to the fact that children may not understand their rights under the Convention. It is interesting to note that the UN produced a document that is a child friendly explanation of the Convention, featuring pictures and so on that are designed to appeal to children and to help them to understand the basic blocks, just to draw your attention to that and that it is a mechanism that could be used even on the domestic side in terms of explanation of difficult concepts. Thank you.

**Madam CHAIRMAN:** Are there any further questions, comments, or observations regarding the submissions by Mr. Hoppin?

Coming out of the discussion on these submissions, we have considered that there could be room to further explore language around Section 38 of the Child Justice Bill. We have also considered as a Committee that they may be some validity in examining another model to effect diversion and that is something that could be taken up with the parent Ministry and of course as we examine further submissions, written and oral, there is the opportunity for us as a Committee to strengthen our own thinking in that regard.

At this point in time, I think that we can consider as a Committee that we fully examined this particular one and think before lunch we can examine or begin to examine a couple more. We have the next submission, submission seven (7), coming from the Probation Department which is basically stating their agreement, so there is nothing of substance to examine. They have been one of the key stakeholder agencies engaged in the process of providing input on the two pieces of legislation and they support the composition of the Child Justice Bill and as it relates to the Child Protection Bill; they do not have any challenges with the Bill in its current form. We can put that one to rest.

Submission number Eight (8) comes from Dr. Veronica Evelyn, who has requested that further to this written submission that she would welcome the opportunity for an in-person interview to answer questions which the Joint Select Committee may have. Her submission is actually about six (6) pages. The first page is really background to her submission, where she is proposing that we cannot just look at the Child Protection Bill in a vacuum but we must consider the socio-political climate and the local situation and the international context as well, that will impact the Child Protection Bill. The first page, second page and third pages seek to provide context to that and then from page four (4), she gets into her review of the Bill by examining three (3) critical areas: the purpose of the Bill; the language of the Bill and the lack of definition of important concepts.

Have all Committee Members been able to read

through fully this submission? Can we take it that way because then, if we have then I would wish to have our technical expert walk us through the specific areas that were raised as concerns from page four (4), which is the purpose of the Bill; the language of the Bill; the lack of definition of important concepts. The rest of it would have been the context as she sees it. Ms. Belle, if you would assist us through an examination of the three (3) areas that were outlined by Ms. Evelyn.

**Ms. SHAWN RAINE BELLE:** Madam Chairman, I would go forward as follows. It is observed that the citation of the purpose as stated in 3(1) is not cited in full and this leads to the first error of interpretation of the purpose of the Bill. When you look at Clause 3 (1) it reads as follows,

*“The purpose of the Bill shall be to a) ensure the compliance with the UN Convention of the Rights of the Child, The Universal Declaration of Human Rights and all other international instruments to which Barbados is a party with special regard to those which afford a the child the necessary protection assistance so that he can assume his eventual responsibilities with the community and for the full and harmonious development of his personality and to grow up in a family environment imbued with happiness, love and understanding. b) promote the welfare of the child. c) provide care and protection for a child, protect a child from abuse and neglect and ensure that the best interest of a child is given paramount consideration.”*

When you look at things in full, it is a full explanation so it is not totally hinged on the International Conventions but goes on to operate and make people understand the context in which it is supposed to be operating, including the fact that it is to deal with children who are in need of care and protection.

Care and protection being fully explained in Clause five (5). We would have done that in a previous meeting, but it is worth emphasising that the child in need of care and protection is a child that does not have a parent. A child that does not have a parent fit to exercise care or guardianship owing to mental or bodily disease, infirmity, incapacity or other circumstances and it reads; I would not go into all of them but as you can see, it articulates the understanding of what should be taken into account in the purpose. This is the first line that needs to be addressed in terms of understanding the full purpose of the Bill.

The other aspect has to deal with what I just went through which is the obligation of the State in context; so I would not go through that but what you have to understand is only what we are party to. This is the situation there, so that has to do with the purpose.

In terms of the language, this is me going into how Bills are interpreted and so that requires a bit of teaching and if you would permit me Madam Chairman, I will endeavour to do so. Usually in a Bill, the interpretation Clause is very important so that, Clause two (2) sets out the specific interpretation of the specific phrases that are

within the Bill but they are times where if the interpretation involves a lot of law, then it would be fully explained in other parts or provisions of the Bill. You would see for instance, *“understanding a child in need of care and protection is fully explained in the other part of the Bill”*.

In those cases, it would usually be flagged with the citation of the particular Clause in which it is discussed. As it relates to the specific terms that are raised by Dr. Evelyn, let me take an opportunity to explain some of the parameters. Protection, for instance, is not defined in Clause two (2) of the Child Protection Bill but the term “child in need of care and protection, is given full explanation in Clause five (5) that defines the parameters of protection in the context of the Bill.

Abuse is defined extensively in Clause two (2) of the Child Protection Bill. If you turn to Page 10 which speaks to abuse and includes child labour; cyber abuse; emotional abuse; financial abuse; physical abuse; sexual abuse and verbal abuse. These terms are then, in turn, defined within Clause two (2). “Child labour” is defined just for the purposes of their discussion on page 12; “cyber abuse” is defined on page 12; “emotional abuse” is on page 13; “financial abuse” is on page 13; “physical abuse” is on page 14; “sexual abuse” is on page 15 and “verbal abuse” is on page 15.

Madam Chairman, “parental responsibility” is defined in Clause two (2) on page 14. The “welfare of the child” is not defined but the welfare can be taken within the ordinary dictionary meaning while “child” is defined in Clause two (2) of the Bill. “Cruelty to children” is not defined but “abuse” is defined and “abuse” is the language that is used throughout the Bill. There is a specific critique, I think, by implication of Clause 61 that this deals with “cruelty to children” but with it in context, you understand what “cruelty to children” would be interpreted by, by looking at Clause 61 of the Bill. It specifically creates an offence for engaging in those activities.

“Health and safety” is not defined in the Bill but would take on its ordinary dictionary meaning. “Best interests” is defined in Clause two (2) as the “best interests” of the child by reference to Clause 3(2) and I will take the opportunity then to explain Clause 3(2) which appears in the purpose of the Bill. One of the purposes of the Bill is to ensure that the best interests of the child is given paramount consideration in all matters.

Clause 3(2), in determining what is in the best interests of the child, the following matters shall be taken into account: the safety of the child, the capacity of a parent to properly discharge his parental responsibility, be physical, mental, emotional and psychological needs of the development of the child, the appropriate care or treatment required to meet the needs of the development of the child, where appropriate, the views of the child, a secure place for the child, the positive development of the child as a member of a family, the love and affection and ties between the child and other persons in the life of the child, the capacity of persons other than a parent to exercise custody

rights and duties in relation to the child, and the continuity of care for the child, and if possible, effect of disruption of the care on the child. Therein lies a full explanation of what is meant by "*best interests of the child*".

In relation to the philosophical underpinnings, we just had a discussion about that but in this case, it is primarily the Convention on the Rights of the Child and specifically the UN Declaration of Human Rights but in terms of the execution, it is through the Convention on the Rights of the Child. These are the philosophical underpinnings that I would have articulated.

"Undefined concept" - I would have gone into what "best interests" means but to go back to say it is defined in Clause two (2) of the Bill, as the best interests of the child by reference to Clause 3(2).

Parental responsibility is defined in Clause two (2) but not in broad terms as Dr. Evelyn asserts. In paragraph A in particular, powers responsibilities and obligations that by law, a parent has in relation to the child, this needs to be understood specifically.

"By law" in the context, the use of the word "law", is understood as the enactments that are passed in Parliament or are made by Statutory Instruments; by Ministers or other functionaries or the common law which is decisions made by the law courts. It would not be true that it is a broad term but in fact, to be read in its true form, powers and responsibilities and obligations, that by enactment or the decisions in the Court of the development of the child. That is how it is supposed to be understood.

**Madam CHAIRMAN:** I missed that point. I got distracted so please indulge.

**Ms. SHAWN RAINE BELLE:** There is an assertion that when you say powers, responsibilities and obligations that, by law, a parent has in relation to the child, basically the critique is that parent's responsibility is brought with the 'understanding'. We understand the (b) part of the definition but the (a) is the part where the critique resides and I am just taking the opportunity to explain the understanding of what "law" means when we are drafting.

The use of the word "law" speaks to enactments; Acts made by Parliament and Statutory Instruments that are law as well, made by functionaries like a Minister; and then there is the common law which represents the decisions coming out of the courts. In the understanding of what law refers to, it is the enactments and the decisions coming out of the courts that define powers, responsibilities and obligations that by law a parent has, in relation to a child; and cannot therefore be interpreted in the understanding of what law means as a broad term but it is quite specific.

There is also an assertion that the use the words, "*the physical; mental; emotional and physical needs of the development of the child*"; "*the appropriate care and treatment required to meet the needs of the development of the child*"; "*the safety and the welfare of the child*" are terms that should be understood in context. It is just thrown out there that those terms are not easily understood. First of all, as a matter of English, they can be understood but in

relation to where these things appear, those are actually the factors that inform the understanding of best interests of the child so when you look at Clause 3(2), you will see them.

In determining what is the 'best interests of the child' the following matters will be taken into account: The safety of the child; the capacity of the parent; the physical, mental, emotional and psychological development of the child and the appropriate care of the child, *et cetera*. Those make clear your understanding of what best interests are, so it is disingenuous to argue that those terms have no specific meaning because in context, they inform the larger understanding of best interest of the child. On that I will end. Thank you!

**Madam CHAIRMAN:** We noticed here that her concern as it relates to "the best interests of the child" and "parental responsibility"; "the safety and welfare of the child", goes hand-in-hand with her further concerns about the consent to the medical treatment involving surgery that a medical practitioner certifies in writing needs to be carried out as a matter of urgency and in the best interests of the child and I just want to remind the Committee that we had examined that particular issue last meeting when we looked at the examination of the one by ...

**Ms. SHAWN RAINE BELLE:** Madam Chairman, just to provide the background. This was the discussion of Mr. Vincent Smith's presentation and I would have indicated that the idea of medical treatment would have arisen in two specific contexts: The understanding of care responsibility as it relates to the authority and the concept of delegated care responsibility in relation to the child care centre. With regard to the Authority, this is the Authority taking responsibility for the child after that child is seemed to be considered in need of care and protection, so they are in the custody of the authority now. The authority then has the power to make certain medical decisions: Those not involving surgery and those involving surgery that are supposed to be taken as a matter of urgency and in the best interest of the child. The care centre has a more constricted role in that they get to make decisions not involving surgery.

Now if we go back to the surgery element and even the non-surgery element. The fact of the matter is that the gender assignment and all of these different types of treatments are elective; the characteristic is of elective surgery and not those that would arise in the normal bringing up of a child. It was also discussed within context that if you understand the true nature of the Child Protection Bill, the actual meaning of those things could also be characterised as abuse. You would have an obligation if you know about that to report it. It is actually the converse that would be true. In that sense, if you understand all of those matters then you would understand the context in which medical treatment arises. Thank you.

**Madam CHAIRMAN:** Thanks for the recall and emphasising the point but since we are into learning the law a bit; Dr. Evelyn makes reference to two specific cases. She makes reference to the cases of the Bolden decision in the

Supreme Court of British Columbia in 2021 and the ruling of the Supreme Court of Western Australia as it relates to these guidelines permitting school officials to develop plans to support the transitioning of children and to withhold this information from parents if they are deemed to be unsupportive of the transition.

I am conscious that Dr. Evelyn is coming before us for an oral presentation and I would wish that within the context of a response, we speak specifically to the cases that she has highlighted as having implications on our system. Everything that you explained just now under the nature of treatment – elective versus emergency and so on – would speak to that but I would think that in our responses we would need to touch specifically on to show how perhaps the rulings/decisions do not come in to bear on this particular piece of legislation, although they may have relevance to other areas that have not been contemplated in the legislation.

Then she goes further to say that during the COVID-19 pandemic the mantra was “follow the science and act out of an abundance of caution”. She adds:

*“The same approach is needed to ensure that the Child Protection Bill does not prove to be a ‘pig in a poke’. Committing to the dictates of international instruments that espouse the non-biological concept of sexual orientation is to abandon science. To enact a law without acknowledging the destabilising social issues which similar laws have caused in other countries and without a comprehensive national dialogue or debate, is to act without necessary caution. In proverbial terms, the choice is clear with reference to reviewing the Child Protection Bill. The country can look before it leaps or it can try to close the stable door after the horse has bolted.”*

She is advising that the country acts out of an abundance of caution. I am hearing the need for us to respond to a criticism and concern that in saying that the current piece of Legislation does not cover that or did not intend to cover that and other areas of law maybe an escape route and may be a weakness of the piece of legislation, if it is truly to protect children. We would like to hear you on that.

**Ms. SHAWN RAINE BELLE:** Again, it has to do with what Barbados is party and it also has to deal with what the international instruments actually say. This is the plague that I am hearing. You are speaking about these things and it is captured as a kind of stand-in fear of interference and bringing in foreign concepts or ideologies but the question is whether those instruments which we are party to actually contain those things. The fact of the matter is that they do not contain those things. If it is that then there is a departure to say that we want to include those things, Barbados as a sovereign State has the right to enter a reservation or just not sign.

**Madam CHAIRMAN:** At which time would amendments to the legislation would be up for consideration?

**Ms. SHAWN RAINE BELLE:** The thing is that if it went that way, right now as they stand, it would not be a need for intervention.

**Madam CHAIRMAN:** If Barbados had no reservation at the time and then they wanted to include it, what would be done?

**Ms. SHAWN RAINE BELLE:** That would require an optional protocol or protocol, in which case then Barbados would be placed in a position where they would decide whether to sign on or not.

**Madam CHAIRMAN:** So the message would be that there is nothing automatic.

**Ms. SHAWN RAINE BELLE:** No, nothing automatic.

**Madam CHAIRMAN:** Members of the Committee, for our discussion. Senator Brathwaite.

**Senator Dr. the Hon. C. W. DaC. BRATHWAITE:** Madam Chairman, I just wanted to get it clear in my own mind in order to understand exactly where we are; that there is no International Treaty Regulation or Convention that treats to the topic which is referred to in the final paragraph of this presentation. In other words, the so-called SOGIE (**Sexual Orientation and Gender Identity Expression**) concept is not embedded in any International Convention. Is this true or not?

**Ms. SHAWN RAINE BELLE:** To which we cited, so you would note the United Nations Convention on the Rights of the Child. The Universal Declaration of Human Rights is not quite a convention but a kind of foundational document that would have informed the other Human Rights Treaties. The next one we spoke to was “all other international instruments to which Barbados is a party with special regards to...” Then you can speak about all of the parameters which we consider to be bound to. It is when then they go and depart from that. If there is a departure, then we will take the necessary action. We will not enter a reservation or we do not sign. If it is that by implication these instruments are then endorsing it, we can always go in and amend. The things are not set in stone so you can always go in and amend or repeal; whatever action is necessary in the circumstance.

**Senator Rev. Canon Dr. J. A. ROGERS:** Madam Chairman, I did not mean to comment on this particular submission for several reasons but the very things that Dr. Evelyn is fearful of, are the very things that the UN cautioned Nations against. In 2019, the UN published their “Born free and Equal: Sexual Orientation Gender Identity and Sex Characteristics, which specifically encouraged States to discourage the mutilation of children because that was the general practice. If a child was found to be born with ambiguous genitalia, the doctors and the parents made the decision on the spot. The UN is the one that has pushed against that and that is why it has been pushing for us to recognise sexual orientation, gender and so on because what it is saying, let the children grow up freely without these interventions, so that they can truly determine who they are.

It was found that a lot of the surgeries that were

done, when the children grew up they were found to be not who their parents and the doctors thought they were. This is a mixed bag of very strange things because she says here that the UN does not recognise sexual orientation. There is no such thing and the very person who supports the idea that she has; who is the doctor from John Hopkins University, is the one who popularised the term sexual orientation and I believe that it is not by nature but by nurture which we are now finding out is not true. She refuses to do any research and then sends these things here to us. I would rather not speak when she comes but I just thought I would say that.

**Madam CHAIRMAN:** I feel similarly because I am very much part of the directorship of a UN body, the ILO, the International Labour Organisation, which recently, I think, broke ground in June this year, in terms of getting sexual orientation included in the programme and budget for a decent work for all. She is right that there was serious opposition from the African States and the Arab States but there was also serious support from Latin America and the Caribbean, Europe and others, so that the programme and budget passed. It was a number of hours of your life that you would not get back to get it done because it took several sessions especially since the new Director General was bringing this programme and budget. He was from Togo, so there were a number of dynamics in there because the Africans felt deceived by a brother. The fact is that at the end of the day it was passed and now in terms of the programme and budget, a lot of redefinition is taking place.

I also was one leading a discussion on behalf of workers about five (5) years ago, on the implementation of unisex bathroom facilities and so on at the time. I had serious personal reservations about it but when you are in those forums, you have to represent the broader agenda, so yes, there is opposition to it but the opposition was overruled and in different instruments. There is now a move to redefine them to make inclusion.

**Senator Rev. Canon Dr. J. A. ROGERS:** That has nothing to do with the Bill but they just want to make it clear that a lot of the opposition in the Arab world has to do with their understanding of gender and the role it plays in the identity of a human being because for them, your gender is more important than your sex; your gender is what determines who you are. Many people do not know that the second most popular nation in the world for sexual reassignment surgery is Iran because in Iran you cannot be homosexual but if your identity tells you that you are not what your body fits, we will fix you and the state sanctions it. It is in their law. Iran, second to Bangkok. I want us to just put things into perspective when we are talking about these matters.

**Madam CHAIRMAN:** That is it reiterating the importance of your earlier point the absence of proper research. The concerns are not misplaced but they are conflating a number of things I think in terms of this submission. Senator Dr. Rogers I hear you when you say, you would rather not respond but I think that there will be the need for some responses because when we get to oral

submissions there will be broadcast which is quite different to the written submissions and there will be a public out there that may need to hear the balance or hear how she responds as well to statistics and information that is placed before her.

I too would not want to respond for a number of reasons but I think that we owe it to the integrity of the pieces before us to do justice to the oral presentations. I recognise Senator Dr. Brathwaite and then Ms. Belle.

**Senator Dr. the Hon. C. W. DaC. BRATHWAITE:** Madam Chairman, I just wanted to find out. Since the two (2) Bills which we are considering do not specifically treat with this topic; is it appropriate for us to treat with the topic in a public submission?

*(Senator J. A. King assumes the Chair)*

**Mr. Deputy CHAIRMAN:** Could you just repeat Senator Brathwaite. I missed a bit of what you were saying.

**Senator Dr. the Hon. C. W. DaC. BRATHWAITE:** I just wanted to say that the Bills that we are considering; the Child Protection Bill and the Child Justice Bill, neither treat with this topic. Is it appropriate therefore for us to discuss this, since it is not part of the Bill, in a public forum? It is another matter. This is not specifically related to the legislation that we are considering.

**Senator Rev. Canon Dr. J. A. ROGERS:** On page five (5) of her submission, she actually quotes a portion of the legislation the bottom of the page, "Taken together and in the context of 3.1, these subsections logically lead to questions such as: "Does the authority of the Authority' (p.11) to "consent to medical treatment involving surgery that a medical practitioner certifies in writing needs to be carried out as a matter of urgency and in the best interest of the child". She is using terms within the actual Bill to bring this matter in.

*Asides*

**Mr. Deputy CHAIRMAN:** Senator Brathwaite, I feel that this is something that is going to come up a lot because of the environment that we are in and you have to deal with it. I do not think it would be wise for us to say it is not in here, so therefore I am not going to deal with it. I think you have to deal with it head on.

**Ms. SHAWN RAINE BELLE:** Chair, just to say that a lot of the arguments, though the expression of concern would be valid, there is a disingenuous way in which they are presented and the discussion of the medical treatment exists within a context and what has been done is to isolate those contexts and just treat them as if they exist in the air and that is wrong and needs to be corrected.

**Mr. Deputy CHAIRMAN:** I would like to ask a question. As a layperson. Does the law or laws of a land, outweigh any conventions that a sovereign state signs?

**Ms. SHAWN RAINE BELLE:** So the law of the land

would be dominant in a sense. The fact of the matter is, they are levels of implementation so you commit yourself at the international level and then the full extent of your commitment is when you actually put it domestically on the ground. If you then have legislation that would be contradicting, then it behoves you as the State party then to change; but then the law of the State of the land at the time, that would be dominant.

(Ms. T. N. S-A. MOORE *re-assumes the Chair*)

**Senator J. A. KING:** So, therefore I am a little bit concerned and I will use that word, that some of the things that are cited in a number of submissions are from other jurisdictions with completely different laws than ours and it is almost as if it is saying to us that because something happens in this part of the world, automatically it is going to happen in Barbados and I think we need at some point in time to really and truly, go back to whole public relations thing again. To get people to understand that various parts of the world have their own specific laws and their own customs which are completely different to ours and it is not everything that happens in some other place, that we have to adopt automatically and I think Madam, you have explained twice in this Chamber now, the options that are available to this government or to any government in terms of these conventions and agreements and all of these things that go on; but I think we are going to really have to speak with the public relations persons to really begin to put this kind of information in the public domain. I think it would allay a lot of the fear that is coming towards us in some of these submissions and that is what I wanted to put on the table.

**Madam CHAIRMAN:** Are there any further questions or comments regarding the submission; failing which we would then continue or pick this up when we have the oral presentation made by Dr. Evelyn and we can ask further questions if we consider it necessary to do so. This one would be deferred until the oral presentation. We have two more submissions that stand between us and lunch or us and adjournment for the day.

These two submissions, I think are simple to deal with even if not simple in the way they are articulated, at least one of them, but submission number nine is from the Council of the Disabled and they are stating in reviewing the Bills they have found that the inclusion of children with disabilities has been succinctly incorporated in an effort to reiterate and avoid future uncertainty; the Council recommends that the final document be more inclusive by being more contextual. Example, adding children with disabilities wherever examples of service to recipients are provided in the Bill.

As a State, party to the UN Conventions on the Rights of Persons with Disabilities, the Government of Barbados must be guided by the Treaty as well as the Universal Declaration of Human Rights, that everyone including persons with disabilities, is entitled to all the

rights and freedoms as set forth therein without distinction of any kind. I think this is fairly straightforward but Ms. Belle, your commentary on it.

**Ms. SHAWN RAINE BELLE:** Madam Chairman, so I do not have any real comments on it other than to indicate that their needs were in fact taken into account even by definition and the understanding of disabilities and that also was informed by reference to the Convention on Equal Rights to Persons with Disabilities, so that should be noted by the Committee as well. Thank you.

**Madam CHAIRMAN:** As it relates specifically to their call for the document to add children with disabilities.

**Ms. SHAWN RAINE BELLE:** Madam Chairman, the thing is that we have to do a full review in relation to the context but to my mind it would have captured most of them. It might be useful to hear from them where they are thinking that there should be specifics. That would be useful.

**Madam CHAIRMAN:** So maybe then the decision would be for us to write to have further engagement with them as it relates to where specifically they would see the need for inclusion because one of the things I was thinking is like where we have upfront under Section three (3), the purpose but then if you put it there to include the UN Convention on the Rights of Persons with Disabilities, if you put it there, then yes it opens up a number of areas that may not be relevant as well.

The decision for this one is that we would write to the Council for the Disabled to ask specifically where they would want the expansion; the inclusion. The final written submission is one that I absolutely cannot summarise but I do not know if I could get Deputy Chairman, could you help me summarise this?

**Senator J. A. KING:** This was difficult. This one.

**Madam CHAIRMAN:** This is the one from Junior Campbell?

**Senator J. A. KING:** This submission from Junior Campbell; it was interesting but the truth is and I will be very blunt. It did not really speak a lot to what we are definitely discussing where these two Bills are concerned. It made a lot of references to a lot of things that he sees to be wrong in Barbados and a bit about his own life and his experiences, but I do not think that it really dealt with the matters before us, so I would just suggest Madam Chairman that this is something that we can note but I do not see this as being anything that we could definitely discuss because it does not in any form shape or fashion, pertain to what these two Bills are about.

I struggled because it just seemed to be a collection of words but I did not understand a lot of it so I do not know if you have any comments, Ms. Belle.

**Ms. SHAWN RAINE BELLE:** Madam Chairman, I did read the submission. To be kind, I did try to distil one of the issues that I actually saw which is when he raises the idea of what is a child. Again you would have to go into the explanation that we have already gone into, but I did put it down as an issue that he raised.

**Madam CHAIRMAN:** The question about how can we protect children when we do not know what is a child. Have we have examined that?

**Senator J. A. KING:** Madam Chairman, I would suggest that if a grown person does not know what a child is at this juncture of their life, there is a mental problem, therefore, I would not entertain ...

*Asides.*

**Senator J. A. KING:** No, there is a definite mental problem. They can go online and you would see a very, very interesting comment from a renowned preacher where he actually is probably one of the first persons that I have heard stand up and say something that totally makes sense.

If in today's world you do not know what the definition of a woman is, you do not know what the definition of a child is, you do not know what the definition of a man is, there has to be some sort of mental illness. There has to be something wrong, after all of these years. I am not one of those people who are going and sit down in any forum and play games with people with these things. If you do not know what is a woman when you see your mother you do not know who she is, or when you see your father you do not know who he is, this is madness. I cannot be a part of it. I am sorry.

**Madam CHAIRMAN:** Thank you, Mr. Deputy Chairman. Are there any further questions, comments, observations regarding the submission? If none, I think that brings us to the end of our examination of the written submissions.

Under "*Any Other Business*" we have two dates proposed to entertain the oral submissions. There are five. The five submissions for oral presentations are Professor Simona Canepa. I hope I pronounced that correctly. Hutson Inniss which was the first submission we considered. He asked for an attendance as well, Miss Roseann Richards representing the Child Care Board, Mrs. Kaye Williams, from the Barbados Bar Association and Dr. Veronica Evelyn.

I would wish to have the Committee's agreement on the way forward, how we would approach oral submissions. It is proposed that the presenters be allowed a maximum of 15 minutes to make their oral submission which would be followed by questioning by our Committee for 30 Minutes. Are there any reservations or challenges to the approach? It would be a maximum of 15 minutes for their presentation and then our questions will follow; our questions and their interaction with the Committee for 30 minutes. Does this seem acceptable, lenient, too restrictive, any comments?

**Senator Rev. Canon Dr. J. A. ROGERS:** How many do we intend to handle per day?

**Madam CHAIRMAN:** Well, there are only five and the

thinking was, if this is acceptable, we can probably handle all five in one day which would mean then that we would be able to move on to the next stage of the Committee's work which would be to go through each of the pieces of legislation section by section to make sure that we approve them.

At the beginning we would have entertained a synopsis. At the end of the process, we have to go through section by section given all of the written and oral submissions that we have been discussing and satisfying ourselves that we are good for amendments to be made or no amendments to be made so that would be the process of the Committee's work. Senator Dr. Brathwaite.

**Senator Dr. the Hon. C. W. DaC. BRATHWAITE:** Thank you, Madam Chairman. I think it is a good thing that we are going to give some persons who have made presentations the opportunity to speak, but I believe in this process we have to be very careful with the management of time. There are persons who make presentations or present a document and when you give them the opportunity to speak, they come with another set of information and there are times when it becomes critical to inform that we are considering the presentation that they have made and not a new presentation which they went and prepared and that 15 minutes is, in fact, 15 minutes.

I believe that if we can manage the time as specified in the manner specified we should be able to get through these presentations in one morning session giving us sufficient time for the other activities that are proposed, but with two conditions, you do not come with new information or a new document and you will not speak for more than 15 minutes. Those would be my observations. Thank you, Madam Chairman.

**Madam CHAIRMAN:** Senator Dr. Brathwaite, I totally agree with you to the extent that written submissions were presented, but there are some that will come and present orally for whom we have not received any submission like the Barbados Bar Association so it would be new to us, the information that they would be coming with. I think strict time management would have to be observed for the presenters and then for our engagement as well. We would have to keep our questions succinct so that people like me, who tend to give a long preamble before a question, would have to find a way not to be speaking to the question, but just asking the question.

The question before us is whether the format of ... for those who have already made written submissions, maybe it is that we can offer them 10 minutes in the presentation and 35 minutes or one half of an hour for our engagement. For those who are now presenting new information, 15 minutes for the presentation and then half of an hour for our interaction with them.

**Senator Rev. Canon Dr. J. A. ROGERS:** I think we should send a general letter to them giving them the 15 minutes.

**Madam CHAIRMAN:** Okay. Give everybody 15 minutes?



*(All members present answered in the affirmative)*

**Madam CHAIRMAN:** We will be setting the timeframe, therefore, for 45-minute sessions. There is a proviso too because the Committee can decide, if there is a Motion by the Committee which is seconded, that we extend the session a bit to facilitate something because there could be something that is particularly interesting and we might not want to restrict ourselves. It may be useful to our work to extend the session maybe by an extra 15 minutes, so we can allow for that as well. Does that make sense? Right.

What our support staff will be doing then is sending out the invitations. The Clerk will be sending out the invitations, maybe with one-hour blocks in between, and members of the Committee would be encouraged to be here, on time so that we can begin the sessions on time. Obviously, if we are late for the first one, it has implications for all of the others and I would not want for us to be keeping parties unduly waiting for us.

Clerk, there is agreement that we keep the sessions to 15 minutes for presentations and half-hour for discussions with the proviso that there can be a motion for the extension of a session. What we have agreed further is that there would be one-hour blocks separating each presentation. Within the context of those parameters, I think it should be possible for us to conclude all five (5) presentations in one day, if the Committee can agree with that. I see general agreement. Any reservations? Now it will be left for us to decide what date that is possible.

**Ms. SHAWN RAINE BELLE:** Chair, I was just wondering about the need to present again the Bills. Do I have to do that presentation again? Okay, just making absolutely sure.

**Madam CHAIRMAN:** The only time again would be after the oral presentations where we go through the Bill section-by-section, where you would not have to present unless there is an area of ambiguity or an area which would otherwise need clarity. The dates that can be considered for those oral presentations would be next week Tuesday or the following Tuesday. The next two Tuesdays are open to us for consideration, which are the 19 or 26 September, 2023. Parliament is the 22 September, 2023. If the 19 is good for all us then it means that we would be able to conclude this work because the process is – even after we go through paragraph by paragraph – the report of the work of the Committee then still has to be prepared, which would not involve us. Our work would be finished once we entertain the oral submissions and then we have the session to go through paragraph by paragraph on each Bill. Although that may sound simple because the two pieces of legislation are very thick, especially the Child Justice Bill; I imagine that going through that process might take at least two days. Can we come back next week Tuesday for the oral submissions? Would that be enough time?

**Deputy CLERK (B. GIBBONS):** Madam Chairman, just let me interject here for the benefit of the Committee. We

had emailed Professor Simona Canepa, the lady from Chile and she wrote back to us. We emailed her on Wednesday and she responded that unfortunately on 19 September, 2023, she will be unable to present because she will not have internet connectivity. That is the issue with Professor Canepa for the 19<sup>th</sup> so it is up to the Committee now to decide whether Tuesday is feasible or the following week. Dr. Evelyn confirmed that she will be available to appear in person next Tuesday. We are awaiting confirmation from the others: Barbados Bar Association; Child Care Board; Family Freedom Barbados.

**Madam CHAIRMAN:** Then that may be cutting it close, if we are being fair to everybody. Then the 26 September, 2023?

**Deputy CLERK (B. GIBBONS):** I agree with that, Madam Chairman. The 26 September, 2023 is more feasible.

**Madam CHAIRMAN:** September 26 would be the day for oral submissions. Committee members, would we be in a position now ... It is a Tuesday. The reason why Parliament is on Friday is because it has to be suspended until 10 October, 2023. So then Tuesday, 26 September, 2023? Ms. Belle, I am very conscious of your time as well. Would we wait until that time if we were in a position after that to agree two tentative dates for our examination of Clause by Clause?

**Deputy CLERK (N. JONES):** Are you admitting persons who may want to come and listen to it?

**Madam CHAIRMAN:** It is normally live-streamed. What is the practise for Joint Select Committees?

**Deputy CLERK (B. GIBBONS):** When presenters were presenting in relation to the Medicinal Cannabis Legislation, they had a number as they appeared before each organisation. They brought their respective parties with them. Some members of the public did come and view the proceedings.

**Madam CHAIRMAN:** So it may be useful to get them to indicate how many people will be coming as part of their delegation on the day? Right. Only the parties that will be presenting will be allowed to invite people. It will be televised. Can we pencil in 29 September, 2023 and 03 October, 2023, to use as tentative dates for the Clause by Clause examination?

**Ms. SHAWN RAINE BELLE:** Madam Chairman, no. The 29<sup>th</sup> September, 2023, definitely no. I have two presentations on that day. It would be a bit too tight for me.

**Madam CHAIRMAN:** How about 03 October, 2023 and 06 October, 2023? That would mean twice in the same week. Senator Brathwaite?

**Senator Dr. the Hon. C. W. DaC. BRATHWAITE:** Madam Chairman, I just wanted to inform that I am likely to be out of the country during the first week of October so I may not be available.

**Madam CHAIRMAN:** By face-to-face and by Zoom?

**Senator Dr. the Hon. C. W. DaC. BRATHWAITE:** I will be out of town.



**MADAM CHAIRMAN:** Okay.

**Ms. SHAWN RAINE BELLE:** Madam Chairman, I am conscious of being away from the office twice in a week. Also, just to understand the exigencies of the office because technically, we do not have a deputy. These are the things that we are having a problem with, so even me being here, my phone is blowing up. The thing is the times.

**Madam CHAIRMAN:** Yes, we need you for the Clause by Clause. We can at least confirm Tuesday, 03 October, 2023 and at that point maybe set another date. You said you will be available for 03 October, 2023? Or, which will be preferable during that week, 03 October, 2023 and 06 October, 2023. You would see us playing with Tuesdays and Fridays because of Parliament; Senate and Constitutional Reform committee sessions. For the moment, those will be the two days available. There is not much flexibility to do other days. That is why for me, it is regrettable because if we could have done next week Tuesday, it would not push us so far down.

**Ms. SHAWN RAINE BELLE:** What I can do, I will try to do October 03 October, 2023 and 06 October, 2023 but it is a push and stretch.

**Madam CHAIRMAN:** For example, today was set until 4:00 p.m. but if we can be efficient and effective in our work, we may not have to use the entire day.

**Ms. SHAWN RAINE BELLE:** Yes, that would be appreciated.

**Madam CHAIRMAN:** Okay. Hopefully the Chair would bear that in mind and encourage us to be efficient in our work. We have an excuse for Senator Brathwaite that he would be out of town. Is there any other business?

Sorry, Members of the Committee. There seems to be a little development that could see us considering something else. I am conscious of Ms. Belle's time as well. We have confirmations from three (3) of the five (5) presenters. The Child Care Board; Dr. Veronica Evelyn, and Bar Association. Would Members be open to considering Tuesday because they were anticipating that we can do Tuesday? If we could consider Tuesday, 19 September, 2023, as in next week Tuesday morning and do the other two on the morning of the 26 September, 2023 and then we can start the Clause by Clause. That would mean: a morning session on Tuesday, 19 September, 2023; Tuesday, 26 September, 2023 for a whole day session, which will be entertaining the submissions and then go Clause by Clause; then on 03 October, 2023, we continue Clause by Clause. The dates that we have would be 19 September, 2023; 26 September, 2023 and 03 October, 2023.

**Ms. SHAWN RAINE BELLE:** Madam Chairman, in relation to Tuesday, 19 September, 2023, you are saying a morning session? Technically, is that 10:00 to 12:00 p.m. or 10:00 to 1:00 p.m.?

**Madam CHAIRMAN:** 10:00 to 1:00 p.m.

**Ms. SHAWN RAINE BELLE:** Okay. Then we have Tuesday, 26 September, 2023 as an all-day session?

**Madam CHAIRMAN:** Yes. Then 03 October, 2023 would be for us to finish the Clause by Clause.

**Ms. SHAWN RAINE BELLE:** Okay.

**Madam CHAIRMAN:** Does that work? Senator Dr. Brathwaite, that will give you the benefit of being here for the presentations and to start Clause by Clause before you go out of town.

**Senator Dr. the Hon. C. W. DaC. BRATHWAITE:** Thank you, Madam Chairman.

#### *Asides*

**Madam CHAIRMAN:** Clause by Clause should start on Tuesday, 26 September, 2023 and conclude 03 October, 2023. There is still an effort on the way to get through to Family Faith. They had asked that we considered their written submission, but we were entertaining them because they asked for 10 minutes. Perhaps, I would recommend that she (Simona Canepa) should be brought in for the first presentation and his (Family Faith) should be put for the second one for that day on 26 September, 2023, since it is supposed to be short and so we might be able to get into Clause by Clause earlier.

Just to recap out of an abundance of caution and for the avoidance of doubt, on Tuesday, 19 September, 2023, we come back here to hear three (3) oral presentations. On Tuesday 26 September, 2023, we continue oral presentations before going into Clause by Clause, so that will be an all-day session and Tuesday, 03 October, 2023, similarly would be scheduled as an all-day session to conclude Clause by Clause.

#### **ADJOURNMENT**

**Madam CHAIRMAN:** Thank you, Members of Committee. Motion to adjourn this meeting.

**Senator J. A. KING:** I beg to second.

**Madam CHAIRMAN:** This meeting stands adjourned.



**FOURTH MEETING OF THE JOINT SELECT COMMITTEE (STANDING)  
ON SOCIAL SECTOR AND THE ENVIRONMENT  
ON THE  
CHILD PROTECTION AND CHILD JUSTICE BILLS, 2023  
HELD IN THE SENATE CHAMBER, PARLIAMENT BUILDINGS  
TRAFALGAR STREET, BRIDGETOWN**

**TUESDAY, SEPTEMBER 19, 2023**

**FIRST SESSION 2022-2027**

**IN ATTENDANCE**

**Ms. TONI N. S-A. MOORE, J.P., M.P. (Chairman)**  
**Senator JOHN A. KING (Deputy Chairman)**  
**Mr. TREVOR A. PRESCOD, J.P., M.P.**  
**Miss CYNTHIA Y. FORDE, J.P., M.P.**  
**Hon. COREY A. LANE, J.P., M.P.**  
**Senator Rev. Canon Dr. JOHN A. ROGERS, B.Sc., B.A. (Hons), M.Phil., D.Th.**  
**Senator Dr. the Hon. CHELSTON W. DaC. BRATHWAITE, Ph.D.**

**ALSO IN ATTENDANCE:**

**Ms. Beverley S. GIBBONS (Deputy Clerk of Parliament)**  
**Mr. Nigel R. JONES (Deputy Clerk of Parliament)**  
**Ms. Shawn Raine BELLE (Chief Parliamentary Counsel (Ag.))**  
**Miss J'anne C. GREENIDGE, (Typist) (Journal Department)**

*The Chairman called the meeting to order at 10:05 a.m.*

**Madam CHAIRMAN:** First up, we would wish to acknowledge the presence of, and welcome The Honourable Minister Kirk Humphrey, who has the mammoth task of ensuring not only that this Bill is proclaimed; that it is seen through to proclamation but that it would be implemented effectively and his Permanent Secretary, Mr. Wiltshire.

We wish first of all to confirm the Minutes of the Meeting held on Friday, 08 September, 2023. Those Minutes were sent to us, so I would wish to proceed taking the Minutes as read. Are there any Amendments to the Minutes? I also wish to acknowledge the Honourable Corey Lane who is with us online. Good morning Sir. Any Amendments to the Minutes, page 2, 3, 4, 5, 6, 7, 8. Hearing none, a motion to confirm the Minutes.

*A motion was moved for the Minutes to be confirmed by Senator Rev. Canon. Dr. J. A. Rogers and seconded by Senator J. A. KING.*

**Madam CHAIRMAN:** Any matters arising out of the Minutes? These Minutes reflect our discussions for the first set of written submissions. You would recall on that occasion we went through four (4) written submissions before us. Are there any matters arising from these Minutes? Hearing none, we proceed to the next matter where as Chairman, I am requesting that the Minutes of the Meeting held last Friday which was only effectively four (4) days ago, that these Minutes be deferred for examination at a future meeting. If that is agreed, I can entertain a motion that the Minutes of 15 September, 2023, should be deferred.

*A motion was put forward by Senator Rev. Canon. Dr. J. A. Rogers for the Minutes of 15 September, 2023 be deferred and was seconded by Senator J. A. King.*

**Madam CHAIRMAN:** Members of the Committee and Honourable Minister and Permanent Secretary, the reason why we are here mainly, is to commence our examination of the oral presentations that have been presented by members of the public. Relative to the Child Justice Bill and the Child Protection Bill, we have received requests from five (5) individuals and organisations for the submission of oral presentations and we have determined that we can take three (3) of these this morning and we will take the other two (2) submissions next week Tuesday, 26 September, 2023. Afterwards, we start the process of going through our Clause by Clause for each of the Bills before us.

The first submission which will be examined is from Dr. Veronica Evelyn, who is a certified Sociologist and she also made a written submission to the Committee which was examined last Friday. Coming out of that written submission, we have considered it necessary for us to defer further examination of anything until we hear the oral presentation which would follow.

The framework for our oral presentations and discussions would take the form of presentations from members of the public which should be no more than 15 minutes; subject to the flexibility of the Chair and it is anticipated that our discussions could take place within a half an hour framework. Reminding members of the Committee that if it is felt that the discussions need to extend beyond the 30 minutes provided for; you would just raise your hand, move that the discussion be extended for further 15 minutes and that would be facilitated. But we are asking members of the Committee to try to be as concise as would lend to us being effective still and efficient, given the time constraints. Our second presenter for instance, The Child Care Board, is scheduled for 11:30 a.m.; given that we are starting just a few minutes after the intended 10:15 a.m., give or take 15 minutes' or so but we would not want to keep presenters waiting for inordinate lengths of time. Once we are comfortable, we can begin with the first presenter and I think this is the stage at which we will begin streaming live.

*Dr. Veronica Evelyn and Mrs. Jennifer Edwards joined the meeting at 10:30 a.m.*

**Madam CHAIRMAN:** Good morning Dr. Evelyn and Mrs. Edwards. Welcome.

The members of the Joint Select Committee (JSC) before which you are appearing wish to express our thanks to you at the onset for responding to the request to offer comment on two (2) very important pieces of legislation that are being considered for proclamation, specifically, the Child Protection Bill and the Child Justice Bill. The Committee has had the opportunity to examine your written submission and we are happy this morning to have the opportunity to have you present and elaborate on the submission.

While I continue to give you an opportunity to settle, I take the opportunity to introduce members of the Committee. My name is Toni Moore. I am the Chairman of the Committee. You met the Deputy Chairman, Senator John King earlier this morning as well. Other members of the Committee are: Senator Canon Reverend Dr. John Rogers and next to him, we have Senator Dr. the Honourable Chelston Brathwaite. Online we have the Honourable Corey A. Lane and other members attending the session today are, to my right next to the Deputy Chairman is Ms. Shawn Raine Belle, she is representing the Chief Parliamentary Counsel (CPC), she is Chief Parliamentary Counsel (Acting). To her right, we have the Honourable Kirk Humphrey, who is the Minister responsible for the Ministry that will be overseeing the Child Protection Bill specifically, and his Permanent Secretary, Mr. Jehu Wiltshire. The other members that you see in the room are the staff of Parliament that will be supporting the Committee. To my left we have the Deputy Clerks, Ms. Beverley Gibbons and Mr. Nigel R. Jones. Hopefully you are settled. In our invitation to you, you are

prepared, I am sure, to make your submission. The time allocated for that submission is 15 minutes but I think you might recognise that the Chairman will not be unduly unreasonable and we look forward to your submission.

At this point, I turn over to you. I should make you aware that the session in being streamed, so members of the public are also able to witness what is being discussed here this morning. I turn over to you without further ado and we welcome your submission.

**Dr. Veronica EVELYN:** Thank you, Madam Chairman; Committee members; fellow Barbadians.

I am grateful for the opportunity to speak on the behalf of the children of Barbados with respect to the Child Protection Bill, 2023.

My name is Veronica Evelyn. I have worked with children and families for over 30 years. For the past 19 years, as a Consultant Sociologist, I have conducted social action research and have trained trainers in Barbados and the region in the area of HIV/AIDS (Human Immunodeficiency Virus/ Acquired Immunodeficiency Syndrome); Health and Family Life Education and Intergenerational Poverty. Prior to this, I was a Social Worker in Family Services in the Welfare Department and then a School Guidance Counsellor for 14 years.

There is definitely a need to update and reform laws pertaining to the care and protection of children. Children need protection because their powers of reasoning and self-control are still developing. Experts tell us that their brains are not fully developed until their mid-20s. Children are vulnerable; sometimes with a follow fashion mentality that predisposes them to believe things and to make decisions which bring instant gratification without thinking of long term consequences. Children need to be protected, not just from people and situations that would harm them and affect their present and future well-being but sometimes they need to be protected from themselves and sadly, even from parents or the State.

Article II of the Charter of Barbados expresses our commitment to the children of Barbados and it says:

*"Understanding who children are and the critical role they have in our present and future, we shall prioritise; protect; guide; nurture; heal and love all our children ..."*

How beautiful! The care and protection of children aims to safeguard their total well-being and to help them to appreciate themselves, their friends, their families, the society, so that they enjoy childhood and grow up to be emotionally healthy, well-adjusted and productive citizens, who are able to carry the country forward.

An up-to-date Child Protection Act is quite in order, however, I submit to you that the Child Protection Bill, 2023 is unacceptable in its present form. The Bill cannot be examined in a vacuum. It must be understood with reference to the local and international socio-political context in which it is framed and in which it will be

implemented.

The Bill forms part of the re-visioning and the reshaping of a Barbados as a new Republic that wants to be counted among the progressive nations of the world, in the way it treats to human sexuality. This was made clear in the September 2020 Throne Speech and re-affirmed in the approved Charter of Barbados, 2021 which references the new concept of sexual orientation. The question is whether the Child Protection Bill intentionally aligns with the vision of a progressive Barbados and the only rational answer is, yes. A “no” would indicate an internal contradiction, an incongruity between the Bill and the vision and core values articulated in such things as, the Throne Speech; the Charter of Barbados; the National Grooming Policy; the Schools’ Nutrition Policy.

There are several areas in which the Bill is problematic but in this submission, on the behalf of the children of Barbados, as a sociologist and as a firm believer in the supremacy of God and the continued relevance of Jesus Christ and Biblical teachings to society, I will look at three areas of concern and these are: 1) the purpose of the Bill; 2) the language of the Bill and 3) the lack of definition or rather, the lack of clarity of definition of critical words and phrases as used within the Bill.

Section 3(1) states that the purpose of this Bill is to ensure compliance with the United Nations (UN) and other international instruments. These instruments forcefully promote new ideas about human sexuality such as the belief that sex is non-binary and includes male, female and any number in between and that gender, if fluid, can change at will. These are the twin concepts that underlie the notion of sexual orientation, which Barbados seems to have embraced.

By stating that its purpose is to ensure compliance with international instruments, the Bill tacitly commits Barbados to satellite status. Yet Article 5 of the Charter of Barbados puts things into perspective and it says:

*“Barbados is part of a global community and strong international relations with other states is vital to national development. As a small island state, we must exist harmoniously with others and work collaboratively to preserve global public good.”*

*Listen to this:*

*“We will honour our international obligations while championing the causes that are important to safeguarding the future prosperity and stability of Barbados and the Caribbean.”*

Consistent with this, the primary purpose of the Bill should be to ensure the wellbeing of Barbadian children, not to ensure compliance with international instruments. It would be most fitting that the purpose of the Bill reflects a pride in national sovereignty.

For example, it can state something like – this is just my little thing – *“the purpose of this Bill is to ensure*

*that the children of Barbados are nurtured and protected in an environment that enables the wholesome development of their unique personalities so that, to the fullest extent possible, they enjoy a safe, happy childhood and grow up to be well-adjusted, productive citizens, able to contribute meaningfully to the long-term sustainable development of Barbados.”*

We do not have to ignore our international obligations but by all means we must put Barbados first. The language of the Bill is also worrisome.

Over the past few years, language has taken on a new dynamism. There is a corps of words and phrases whose meanings have expanded. For example, the words “justice; dignity; equality”, now have very different interpretations than they did in 1948 when the Universal Declaration of Human Rights was crafted. One man’s meat is another man’s poison; one man’s terrorist is another man’s freedom fighter. It is a similar thing with the language of the Bill. Depending on one’s views regarding the concept of sexual orientation, the very same child care issue may be assessed as either protection or abuse; cruelty or care. One person may see an issue as a matter of care and guidance or care and protection while another sees it as neglect and abuse or a violation of parental rights. Depending on perspective, the same issue may be seen as harming a child or as securing their health and their happiness.

Given this fluidity of language which permeates the Bill; until the country firmly decides where it stands regarding sexual orientation, any legislation – even remotely – touching on related issues, will be susceptible to self-serving interpretations.

I therefore recommend that the language of the Bill be revisited, with a view to pre-empting unintended interpretations that would be inimical to the wellbeing of our children and our country.

Another problematic area is the lack of definition or rather the vague definition of critical phrases such as Sections 3 (1)(e) “the best interest of the child”; 3(2)(b) “the capacity of a parent to properly discharge his parental responsibility”; 3(2)(c) “the physical, mental, emotional or psychological needs and development of the child”; 3(2)(d) “the appropriate care or treatment required to meet the needs or development of the child”; 4(a) “the safety and welfare of a child”.

Now taken together and in the context of Section 3(1), these subsections logically lead to questions such as: According to Section 2(b), can the state consent to gender-affirming surgery for a child on the advice of a doctor, without a parent’s approval? Does parental responsibility include the responsibility of a parent to allow a child to change his or her gender, if it is felt that this is needed to fulfil his mental, emotional, psychological needs and development? Can a care order be made with respect to parents who are deemed abusive because they do not support the child’s belief that he or she is living the wrong body?

Section 5(1) outlines reasons for which a child may be in need of care and protection. In Section 5(1)(f) what does “moral danger” mean? What does Section 5(1)(h) mean? I will read it here:

*“The authority has the power to remove a child if that child suffers from a mental, emotional, physical or developmental condition that requires treatment to cure, prevent or ameliorate the effects of the condition or harm suffered and the parent does not or refuses to obtain treatment.”*

Now tell me, what does that really mean? These are some of the troublesome sections of the Bill that conscientious citizens like Miss Felicia Dujon, have persistently queried with respect to parental rights, vis-à-vis the rights of the State. In the absence of clear definitions and within the context of compliance with international instruments, provisions of the Bill are open to tailored interpretations and this is no straw man.

There is ample evidence to support such a claim. Consider, for example, the details of the Bowden decision of February 2019 in the Supreme Court of British Columbia or the September 2021 ruling of the Supreme Court of Western Australia in the case of T.M. Nine. In both cases there were legal wranglings based on the fluid interpretations of some of these very words and phrases and I have made those documents available to you.

Also consider the recent ruling regarding the Montgomery County Board of Education guidelines for gender identity. These guidelines permit school officials to develop plans to support the transitioning of children and to withhold this information from parents, if they are deemed to be unsupportive of the transition.

These and many similar rulings and judgements indicate the challenges that will inevitably confront the country, if the Child Protection Bill is enacted without clear definitions of critical but vague and ambiguous words and phrases. I will soon be finished. During the COVID-19 pandemic, the mantra was “follow the science and act out of an abundance of caution”. The same approach is needed with the Child Protection Bill. Committing to the dictates of international instruments that espouse non-biological concepts is to abandon science. To enact a law without acknowledging the destabilising social issues which similar laws have caused in other countries is to act without necessary caution.

In proverbial terms, the choice is clear. The country can sensibly look before it leaps or it can try to close the stable door after the horse has bolted. It is strongly advised that in all new legislation concerning children, the country acts out of an abundance of caution but if we insist on embracing the concept of sexual orientation as expressed in the Charter and that is now being considered for inclusion in the new Constitution, then at least, let us do so with our eyes wide open to all of the ramifications.

The Bible says, a prudent man sees trouble coming and takes cover but the naïve keeps on going and eventually pays the price. Let us not be naïve. I urge the

relevant authorities to revisit the Child Protection Bill; reconceptualise its purpose; review and revise language, so that the provisions of the Bill are consistent with an informed well-reasoned national stance on sexual orientation.

In all things, Barbados and the children of Barbados must come first. As stated in Article 5 of the Charter, while we honour our international commitments, we will champion our own causes for our own betterment. Revisiting and revising the Child Protection Bill 2023, is critical to safeguarding the future prosperity and stability of Barbados. It is also necessary for the true protection of our children who are our future; the ones who will carve the character and culture of our new Republic. Thank you.

**Madam CHAIRMAN:** Thank you, Dr. Evelyn for your submission. As we examine it, first we will turn to the Chief Parliamentary Counsel because there are a number of aspects of your submission that would challenge legal aspects in the way the Bill is presented, specifically along the lines of the purpose of the Bill; the language of the Bill and what you classified, and spoke of0 lack of clarity with certain terms of the Bill. Ms. Belle, over to you for initial response.

**Ms. SHAWN RAINE BELLE:** Good morning to the Members of the Committee and good morning, Dr. Evelyn. I am just acknowledging your submission. Just to make some observations in relation to the interpretation of legislation. The interpretation of legislation is actually dictated by a number of materials, including the Interpretation Act, which gives some insight into the way that legislation is supposed to be interpreted, as well as common law positions that are decided in cases that would also elucidate how legislation also needs to be interpreted. Some of the Conventions, as I would say, are articulated within legislation, so for instance, in the Interpretation Act, in the Law Revision and Law Reform Act and in the Constitution, those things have a bearing on how this legislation would be framed. It is with this understanding that we need to approach the legislation and how it is to be constructed.

In terms of the purpose of the Bill, I will take the opportunity now to indicate that you would have highlighted Clause 3(1) and specifically Clause 3(1)(a) but if you take into account that the subsection would have other Clauses, so that (a), (b), (c), (d), and (e) are also to be included and that is stated when you use the word “and” in the penultimate paragraphs. The penultimate paragraph in Clause 3(1) is actually deep, so that in full understanding of the purpose, you would have to take into account the fact that it is to ensure the compliance with the United Nations Convention on the Rights of the Child; the Universal Declaration of Human Rights and all other instruments to which Barbados is a party; and that is very important.

Then, there are other parts of it that are stated; you have to read and promote the welfare of a child; provide the care and protection for a child and notice that care and protection is further articulated in Clause Five (5). Finally,

protect the child from abuse and neglect and also ensure the best interest of the child is given paramount consideration in all matters.

Now, in Clause Two (2), you would see that best interest is defined as, referring to Clause 3(2), which gives an explanation of what is considered to be in the best interest of the child. Clause 3(2) actually goes into, "in determining what is in the best interest of the child, the following matters shall be taken into account:

- (a) *the safety of the child;*
- (b) *the capacity of a parent to properly discharge his parental responsibility;*
- (c) *the physical, mental, emotional or psychological needs and development of the child;*
- (d) *the appropriate care or treatment required to meet the needs or development of the child;*
- (e) *where appropriate, the views of the child;*
- (f) *a secure place for the child;*
- (g) *positive development of the child as a member of a family;*
- (h) *the love affection and ties between the child and other persons in the life of the child;*
- (i) *the capacity of persons, other than a parent, to exercise custody rights and duties in relation to the child; and*
- (j) *the continuity of the care for the child and the possible effect of disruption of that care on the child.*

If you read the entire purpose, it is from Clause 3 (1)(a) to (b) to (e) and then certain parts of the phrases have in fact been defined. This is something that you would have to take into account in understanding the entire purpose of the legislation.

**Dr. Veronica EVELYN:** I would have taken that into consideration. In fact, I went back to the Child Care Board Act, which this is replacing and let us look at Section 3(2)(b) in the Bill and then Section Five (5) in the Child Care Board Act.

The Bill talks about parental responsibility and remember we talked about the one man's meat is another man's poison. Parental responsibility can be anything because some people see and when you look at the Bowden case and Montgomery case and so on; some people see parental responsibility as affirming a child in a delusion; other people see parental responsibility as helping a child to change their gender to accommodate that delusion.

Let us look at this. Clause 3(2)(b), talks about the parental responsibility in general terms.

**Madam CHAIRMAN:** Just a minute because for the purpose of clarity, this is like a conversation, so rather than

another presentation, we would allow for CPC to comment.

**Dr. Veronica EVELYN:** I was actually answering about the two sections.

**Madam CHAIRMAN:** Sorry, it seemed to the Chairman that you were going onto something else.

**Dr. Veronica EVELYN:** I am so sorry. Clause 3(2)(b) talks about parental responsibility. Now, in Section two (2) as you rightly pointed out, this is on page 14, it includes the rights and duties, just as it is defined in Section 5(1) of the Child Care Board Act and I think that is page nine (9). Then it specifies, powers, responsibility and obligations that by law, a parent has in relation to a child. That is a broad open statement and it is an example of how linguistic ambiguity can facilitate a sort of self-serving definition. On the one hand, we are looking at law and on the other we are looking at language.

**Madam CHAIRMAN:** Okay. Ms. Belle.

**Ms. SHAWN RAINE BELLE:** Madam Chairman, let me take the opportunity to indicate that when you are using the word law in legislation, this is supposed to refer to enactments that are passed in Parliament or through delegated power to a functionary, whether it is a Minister or other type of functionary to make subsidiary legislation. So those are enactments.

The term law also refers to the case law that would be coming from the courts so that when you are interpreting rights; duties; powers; responsibilities and obligations that by law a parent has in relation to the child; when it says law that is what circumscribes how it is supposed to be interpreted. All the rights; duties and powers and responsibilities and obligations as set out in law. Law meaning enactments coming from the Parliament or set out in S.I.'s as well as those cases that are coming out of the courts. That is what the use of the language means and that is how it will be interpreted. Thank you.

**Madam CHAIRMAN:** Members of the Committee, anything at this stage?

**Dr. Veronica EVELYN:** May I ask a question?

**Madam CHAIRMAN:** Certainly.

**Dr. Veronica EVELYN:** I was wondering in the drafting of this Child Protection Bill ... because when I look at it in its entirety and especially the language and the purpose, I wonder if it was entirely home-grown or if they were external influences that sort of shaped the drafting of the Bill.

**Madam CHAIRMAN:** I think your submission to the Committee recognises that any Bills or contemplation must be taken within context not only local but international but before I turn it to the drafters to respond; CPC to respond. What I would wish to ask of you, is if you accept the response given that in law, refers specifically to enactments and also cases that are judgements that have come down from the courts.

**Dr. Veronica EVELYN:** I do understand the differentiation. I am not a lawyer and I like to stay in my lane. I am a sociologist. I cannot argue with law.

**Madam CHAIRMAN:** Much of what your submission has proposed concern arguments in law so it is important to get the responses in law, so that the interpretation for sociologist and laypersons like me, is better understood. CPC would you wish to continue?

**Ms. SHAWN RAINE BELLE:** Yes. Madam Chairman, just to underline the commitments that Barbados has made in relation to the International Conventions. It should be observed that for Barbados, the main underlying international Convention would be the UN Convention on the Rights of the Child. Barbados has been a signatory; has been a party to this since the 1990's. So it signed onto the Convention 19 April, 1990 and ratified the Convention on 09 October, 1990.

The weight that should be given in terms of the signing on of the Convention is, or the ratification, is as follows that a state that ratifies one of the International Human Rights Treaties of which the Convention on the Rights of the Child is one. It assumes the legal obligation to implement the Rights recognised by the Treaty, though through ratification the State undertakes to put in place the domestic measures and legislation compatible with their Treaty obligations.

The objective of stating the above is to indicate that Barbados since the 1990's has committed to implementing rights as recognised by the Treaty and the Bill is only further recognition of that commitment. That being said, the State can enter into a Reservation on a Treaty. A Reservation is a Declaration made by a State which purports to exclude or alter the legal effects of a specific provision of the Treaty in its application to the State. A Reservation enables a State to accept the Multi-Lateral Treaty as a whole by giving it a possibility of not applying specific provisions for which it does not want to comply. Reservations can be made at the time of signature; ratification; acceptance; approval or accession. Article 51 of the UN Convention on the Rights of the Child makes provision for reservations to be made by the State at the time of ratification or accession. Barbados at the time did not have any reservations - that is at the time. If there are any protocols that may come along that may seek to amend the said Convention in a way that we do not agree with, the State sorry, does not agree with; it can enter into a reservation or it could just not sign at all. These are the parameters and the rights of the State as a Sovereign and I just wanted to point that out as well. Thank you.

**Dr. Veronica EVELYN:** Is it possible and would there be something wrong in stating the purpose in such a way that we placed Barbados? This is a Child Protection Bill, so could the purpose be the focus be on children and on their, this is in line with Article five (5), on their contribution to the long term sustainable development of the country?

I am very concerned about this because you know what Errol Barrow said, "Friends of All. Satellites of none." We want to, we are a new Republic and we want to have that National pride. Our purpose is to look after ourselves and our children so that they can carry our

country forward. This Bill talks a lot about psychological health, so I would like to look at the psychological health of Barbados. When I take up a Bill and I see, "*The purpose is to comply with international instruments,*" I do not feel good about myself. I want to see me. I want to see Barbados but most of all I would like to see the children be up front and centre in that purpose. I defer to the lawyer. I do not know if that is possible. Is there something wrong in revisiting and reconceptualising and rephrasing that purpose of the Bill, so that we signify a sense of national Sovereignty?

**Madam CHAIRMAN:** I think that CPC will respond but as you contemplate the purpose of the Bill; the full title of the Bill is a Bill entitled, "An Act to make provision for the reform of the law on the care and protection of children." So this is really the context to within which the Bill is before the Parliament of Barbados. Of course, the Charter expresses overarching interest and objectives as it relates to children but the Bill before us is very specific and that is a layman's view but CPC will pick up further on the explanation.

**Ms. SHAWN RAINE BELLE:** Yes, Madam Chairman, as I would have explained before, you cannot take A without taking B, C, D and E which were articulated in the Bill; that is the first thing. The second thing is that the said international agreements *et cetera*, they are speaking to the international norms that speak to care and protection and respecting the rights of the child, from that perspective you would not be able to argue that the legislation is not child focused.

It includes the guiding principles that are consistent with the United Nations Convention on the Rights of the Child; child participation; paramountcy of the best interest principle; key procedures in the care and protection process through investigation and placement. It recognises the need for care planning and helpful guidance in general approaches to child protection procedures. It also establishes a new and much needed Court orders to assist in protection, rehabilitation and re-integration of children and recognises the intersection between children in conflict with the law and children in need of care and protection and that is its overlap with the Child Justice Bill. It would be difficult for you to argue in law that is not child focused.

**Dr. Veronica EVELYN:** I am coming here from the point of view of a sociologist and as a linguist of sorts because I did do a masters in Sociolinguistics. I did mention, if you look at my submission, I did look at Section 1(e), Sections 3(2), 3(c), 3(d), 3(e), and Section 4, so it is not what is said, it is the interpretation. I would suggest that we look for a while at the cases that I brought to you, the one in western Australia; the one in Canada, where these very words and phrases, "the best interest of the child", people saw it as different things and that is the problem that we are going to have to face. "The best interest of the child" can be one thing if I think that there is such a thing as sexual orientation and quite the opposite, so even though this is a Child Protection Bill, we know that protection on one side



of the fence is actually seen as abuse; care is seen as cruelty; harm is seen as health. Do you understand the kind of problem that we are putting Barbados in? We are just open, out to sea. We have to decide. We are a democratic country and we can decide what we want to decide. What I am saying here is that whatever we decide should be well informed and very well-reasoned. The French existentialist talk about *de bonne foi*. Whatever we decide and whatever we do, we have to be able to bear the consequences. That is all. But right now we are kind of just blowing in the wind.

**Ms. SHAWN RAINE BELLE:** Madam Chairman, just to indicate and I would have explained earlier. The interpretation of legislation is governed by specific conventions and rules and so you would not be blowing in the wind. It is not free for interpretation but that those conventions, as reduced or codified in the Interpretation Act; in other pieces of legislation as well as cases on the particular matters, those have to be taken into account as well as the parameters set by the Bill itself which appear in Clause two (2).

Those then anchor how the legislation needs to be interpreted and I need to emphasise that as much as possible and I also have to point out the fact that you need to interpret Clause 3(1) in its entirety and respect the fact that it has been interpreted and defined with the things that you are concerned about that "best interest of the child". Clause two (2) goes into that and care and protection, Clause five (5) goes into it.

In addition, I did look at your cases, I will say to you that from Australia's and Canada's points of view, those cases would have persuasive weight but they would not be considered to be binding and in the understanding of how the medical treatment would come up in the first place. It arises in two (2) specific circumstances and I will draw your attention to that. It has to be looked at in context.

In the definition of care and responsibility in Clause two (2), it authorises the Authority who would then be given the custody of the child after the child is deemed to be needing of care and protection. It authorises the Authority to consent to medical treatment not involving surgery for a child on the advice of a medical practitioner or consent to the medical treatment involving surgery; a medical practitioner certifies in writing to be carried out as a matter of urgency and in the best interest of the child.

In the second instance, it talks about delegated care and responsibility which is where the child is in the custody of a child care centre in which case then, it with have a) consent to medical treatment not involving the surgery for a child on the advice of a practitioner. You would see that the Authority then has more weight in terms of what they can decide. In the circumstances that you would have brought when it talks about "as a matter of urgency", if a word is not defined within the legislation itself or anywhere else, it would take on the ordinary dictionary meaning. This means that it would have to be that the medical intervention would have to be for immediate action. Even if you look at the circumstances in

the case, you would have seen that they would have had to subject the child to all kinds of tests and there were all kinds of goings around to say what is really happening, that is not immediacy. That may be urgent, but it is not immediacy. This is talking about immediacy so the thing is that it is for immediate action so that they can make the appropriate decisions in the proper time. I am just pointing out to you how this will be interpreted.

I need to take pains to specify to you that the cases that you would have raised are persuasive, but not binding. They may even look at it but you have to look at it in the grand scheme of things where you are talking about the circumstances that obtain in Barbados. That is why you cannot just say that it will be interpreted 'any old how' but that it would be grounded by all of the matters that I would have stipulated to you.

Thank you.

**Madam CHAIRMAN:** Senator Brathwaite, I recognise you for an observation.

**Senator Dr. the Hon. C. W. DaC. BRATHWAITE:** Thank you, Madam Chairman and a good morning to all.

Madam Chairman, I would like us to express to Dr. Evelyn our thanks for her presentation and for taking the time to review and to express her opinion on the Bills that have been brought to our attention. I also want to express that it is important that in our consideration of these documents, that we obtain the widest possible input, especially from persons such as Dr. Evelyn who is a sociologist and others; to help us in our deliberations and to help us to fashion a Bill that is relevant to Barbados today and for the future.

I listened carefully to the intervention of Dr. Evelyn and she made two important points, in my opinion, 1) that the Bill must emphasise the well-being of the children of Barbados and not compliance with international obligations. Madam Chairman, during our meetings, we have had the opportunity to review both of these Bills and I am convinced that while they do take into consideration international context and international obligations; these Bills are focused on seeking to do the best for the people and the children of Barbados.

In establishing an authority to provide for the care, protection and rehabilitation of children; to investigate complaints; to remove the child from homes where the child's welfare may be threatened; to monitor the operation of child care centres; to issue guidance for child care centres; to establish with the approval of the Minister, policies and procedures respecting all aspects of child care; to provide for consultation and direction to relevant authorities respecting the care of the child; to promote and safeguard. All of this is set out in part two (2), Administration of the Child Care and Protection Bill and there is much more that I can go on to mention which is referenced there.

In addition, of course, in Section five (5), the Bill sets out very clearly, the conditions under which the state should intervene in the need, care and protection of

children. I must state that while it is true that the Bill focuses substantially on our local reality, it does take into consideration the international context and the international context in my opinion, Madam Chairman, is not developed in a vacuum. The international context is developed by the United Nations, where there are representatives today of maybe 192 countries, in which international opinion; international circumstances; international experiences; are discussed and on the basis of that, an international Convention is developed where countries can then agree or not agree with the final preparation.

In the United Nations, Barbados is represented and our representative would have an opportunity to participate in the dialogue and the discussion that takes place in the formulation of international standards; international conventions; bringing to bear the experience of Barbados and the experience of 192 other countries. International standards are important; they give context; they give relevance and they bring best practices to the table that may be relevant to the development of our legal system, so the international context is important.

Let me go back and say that this is a Bill that focuses on the future of the children of Barbados and the relationship between the children; the parents; the home; the teachers; the society; the community and how we treat with this important resource, which is our future. I am concerned that in the last paragraph of her presentation, she says the following:

*"It is strongly advised that in all new legislation concerning children, the country act out of an abundance of caution. If we choose to walk into the world of SOGIE (Sexual Orientation, Gender Identity, and Gender Expression), let us do so with eyes wide open. The relevant authorities are urged to revisit the Child Protection Bill; reconceptualise its purpose; review and revise the language so that the provisions of the Bill are consistent with a well-reasoned national stance on sexual orientation and gender identity."*

It is my view that this Bill is much more and needs to consider much more than our stance on sexual orientation and gender identity. This Bill is about the future of our children. This Bill is how we consider and protect the one fundamental resource that is critical to our future: Our children.

With those words, I am obliged, Madam Chairman.

**Madam CHAIRMAN:** Thank you, Senator Brathwaite. I do recognise Senator King.

**Senator J. A. KING:** Madam Chairman, we are at 16 minutes past 11 and I would like to move a Motion that we extend this particular session by 15 more minutes; by no more than 15 minutes.

**Senator Rev. Dr. J. A. ROGERS:** I beg to second that, Madam Chairman.

**Madam CHAIRMAN:** Dr. Evelyn, we have some further time that we can engage with you because I think, having heard the Chief Parliamentary Counsel and Senator Brathwaite, you may wish to respond. I also recognise that Senator King wishes to make an observation.

**Senator J. A. KING:** Thank you, Madam Chairman. Dr. Evelyn, I just want to make this observation. In your submission you have made reference to other jurisdictions all the time, in where you have the concerns. The last time I checked, sovereign states have the "right" to decide what they are going to allow or not allow, based on their own cultures and their own understanding of who they are and so on. I get a sense that you are pre-empting what Barbados is doing and I get a sense that your fear comes from the fact that you believe – I will say it as simply as humanly possible – that this would just be a follow-fashion approach in terms of how maybe we have seen a lot of things happen in the world before.

I have not gotten anything from reading the Bill; looking at the things that give me that same impression and you made the point that people interpret things differently. I just want you to also bear in mind that you mentioned the Bible when you said that we were Christians. You would agree that even in terms of religion, people interpret things differently all across the globe, coming out of the same books.

I said that, just to say that if laws were not written in such a way, where you have different interpretations of different things, then there would probably not be any need for lawyers. There would be no need because everything would be just set straightforwardly. That is not how the world works and I am sure that you would appreciate that even in sociology, that one may have words or definitions that people in different parts of the world will interpret differently. I just want to say to you that I fully appreciate your concerns, although in some instances I do not agree that we are not clear on a lot of the definitions. The two (2) times that you mentioned the parts of the Bill where you spoke about the United Nations and other things, the representative from the Chief Parliamentary Counsel had to go over it twice.

You cannot take it out of context. It would be out of context if you do not put the full thing together and that is all I would like to reiterate as we go through these particular discussions. I go back to the Bible, if you took Old Testament by itself without putting the New Testament, there are things within the Old Testament that you would probably wonder what type of a God there is, especially in the laws themselves where you have things where they stoned people and all of these different kinds of things, so we have to take everything into context as to how it is built out. I just want us to be cognisant of that as you go forward in these discussions.

**Dr. Veronica EVELYN:** Thank you. I would like us to look at Barbados as is. We really have to see where we are and we talk about sovereignty and it sounds good and I would love to see us emerge as really sovereign but

the truth is, sovereignty is not what it seems. Take for example what has happened in Uganda. We are cash strapped and in the Throne Speech the Governor General said it. We do not trade with ourselves. We do not give ourselves money and therefore, there is that sensitive relationship with the international community and to some extent we have to toe the line; call a spade a spade, so that we are not able to just do our own thing, it has to be in context.

Let us go back to the children because that is what we are talking about. I remember in 2002, doing some research, actually in 1994 doing an epidemiological study with the Ministry of Health. I went home shaking because I did not need to wait for any results and analysis, I could see clearly what was happening and in 2002, you know we have National Insurance Scheme (NIS) reforms and it is even getting further. Now, look at Barbados, our children are our only real resource.

We do not have many natural resources and we do not have financial resources. Our people are our resources. We are about 80,000 to 100,000 people short because we have had a (population growth) rate of 1.6 per cent for far too long. When you consider the labour sector, what is happening is that we have a widening dependent sector and a narrowing productive sector, and that is why like in 2002 was projected that by 2015, whereas at one time it was three (3) persons who were working supporting one (1) non-contributing member by 2015. They said, what is going to happen, one (1) contributing member is going to be looking after nine (9) non-contributing members and now it is even worse. When we look at our children, we have to be really careful with what we do.

I listened to the news last week where they said there was a 300 per cent increase in the cases of autism. Consider our children are exposed to a lot. In primary school, they are using drugs already, so that what we have to do is to just do what the Charter says, love; care; protect; heal and we have to preempt things. Now, I heard persons who I thought would know better saying, this is not happening in here. That is silly. We cannot wait for it to happen; we have to be wise; we have to punch above our weight. We have to see what is going to happen and take those children, carve them and mold them and help them because as I said, not me, the experts, the brain is not fully developed until you are in your 20s.

You make all kinds of foolish mistakes when you are young and so we should be in our schools teaching our children how to manage themselves; how to control their emotions; how to have that self-control in all areas, not just sexuality, but sex, drugs, eating habits, rest, due to non-communicable diseases (NCDs). We have to have a real appreciation of our children add recognise that 30 years from now, how many of us around this table are going to be here? Those little preschoolers are the ones who are going to be sitting here and those who are 18 years -- one of them might be the Prime Minister.

My concern in looking at this and understanding

that there is a move towards social change based on this non-scientific notion of sexual orientation. When your neighbour's house is on fire, you wet yours. Barbados, we need to wet our homes.

What is sexual orientation? The World Health Organisation says it has to do with sexual preference, attraction and behaviour. In that context, we have to save our children.

**Madam CHAIRMAN:** Thank you Dr. Evelyn. I think we have found ourselves at the stage where we are likely to be going over or reiterating previous comments that we have made. What is clear, from your submission is that there is a definite concern of yours that the Committee recognises is a concern that ought to be examined. The Bill before us in terms of its title; what it seeks to address; does not contemplate the handling of the issues to the extent that you have articulated them.

Perhaps, it may be useful to have the policy of the Government restated because the Bill and CPC has been very clear on it, at Section five (5); or taking the purpose at Section 3(2), along with Section five (5), has been very clear that the concerns of gender assignment or sexual orientation in the way that you have expressed them, will not be provided for; nor will not be allowed within the Bill as it is outlined.

You have a concern but your concern is not really a concern that is reflected in the Bill because the Bill does not speak to it in the way that you have articulated it. The Bill does not allow the State to assign gender or the State to make determinations on sexual orientation.

What I think you could probably be calling for is for Government, if it has not been made plain enough, to restate its position on gender assignment. In so far as we are examining the Bill on child protection, I think that from the engagement up to now and from the clear responses of CPC, that it can be concluded that the concern, though relevant, is misplaced within the context of the Bill.

The issue of sovereignty and the concern about Barbados being bound by the different instruments of which it has signed onto that also has been clearly addressed with the recognition that up to now we do not have any Reservation and that has been reiterated by CPC and so on. Even if, at some point in time, those instruments change in a way that it needs to be Reservations in a way that does not reflect what we have committed to in the Charter of Barbados; in a way that does not reflect the care and protection of the child, in a way that Barbados as a sovereign State contemplates it; then we can submit Reservations and I am sure that we will submit Reservations because Barbados continues to be that country that sees itself as being friends of all but satellites of none.

I do not know if they are any Members of the Committee in the 29 and a half seconds that we have available to us that would wish to offer another question or observation but since I see none, it is my task to, and responsibility, to thank you. Certainly, it has been food for

thought. What you would not be privy too would be the contemplation and consideration of the written submission where we looked quite extensively too at the cases that were proposed by you which you put before us for consideration and during those deliberations, the Committee considered that your submission was indeed a relevant concern that I am sure that you and many others would have; but that the concern -- it would take the Bill a little outside of the scope and contemplation that has been or indeed remains before the Parliament of Barbados at this time.

I take this opportunity to thank you and Mrs. Edwards who has been supporting you. Thank you for responding to the request for submissions. A number of people have offered public commentary but have not gone further in responding so that we can have this very important engagement so we thank you for coming and clarifying your position; engaging us and hope you have a wonderful day. We will, I am sure they will be an opportunity when we would respond further as we examine the other considerations and the other presentations and bring the matter to a close. Thank you very much.

**Dr. Veronica EVELYN:** Thank you too.

*(At this point there was a break to allow Dr. Evelyn et al to exit and for representatives of the Child Care Board to be ushered into the meeting)*

## RESUMPTION

**Madam CHAIRMAN:** Good morning, we are back in session. I recognise this morning with us a team from the Child Care Board. Welcome. This is a very important engagement. We are happy to be receiving your oral presentation as the Child Protection Bill, will be the Bill, once it is passed, that will replace the existing Child Care Board Act. The Members of the Joint Select Committee who are tasked with the responsibility of examining the Child Protection Bill and the Child Justice Bill; I will introduce for your benefit at this time. I am going around from my left: We have Senator Rogers; Senator Brathwaite; Miss Cynthia Forde and Deputy Chairman of the Committee Senator King and myself as Chairman of the Committee, Toni Moore. We are the Members of the Committee; we have the Honourable Corey Lane who was online but is not online at present. Here, this morning in attendance to at least participate in these discussions, would be your line Minister, so he needs no introduction nor would your Permanent Secretary, Mr. Wiltshire. Ms. Richards, I would wish to turn over to you at this point in time, to introduce the members of your team from the Child Care Board and then you can get right into your presentation which I am sure you have been informed should be contained to about 15 minutes, subject to the flexibility of the Chairman.

**Mr. Shawn R. RICHARDS:** Good morning, Madam

Chairman. Good morning to the Members of the Joint Select Committee. My name is Roseann Richards and my team is, to my left: Mr. Colin St. Hill, the Deputy Director of the Child Care Board; Ms. Carla Haynes, Senior Child Care Officer with Responsibility for Residential Care; Ms. Julia Davis, Senior Child Care Officer with Responsibility for the Child Abuse Prevention Programme. To my immediate right are: Ms. Roxanne Sanderson, Senior Child Care Officer with Responsibility for Foster Care and Adoption and Ms. Ngina Dyal, Child Care Officer, Child Abuse Section.

**Madam CHAIRMAN:** You may proceed. Welcome, everybody.

**Mr. Shawn R. RICHARDS:** The Child Care Board in its present existence is responsible for the care and protection of children and as we presently operate; we function under CAP 381 of the Laws of Barbados. The new Child Protection Legislation, my team and I are eagerly looking forward to it being passed into law because this new Child Protection Bill offers us lots more to work with as practitioners in the field of social work; looking after the care and protection of children. While the Child Care Board has been an integral part of the process of developing or devising the new Bill, which was laid in Parliament in May, 2023. Subsequent to that Bill being laid; there was a lot of public comments. We as the practitioners, our ears were to the ground so we listened and we went back together as a team to see how else we could make it not only user-friendly to us but satisfying to the general public, based on what they were saying.

When my team and I discussed it, some of the suggestions I shared with my Permanent Secretary, but I think some of the information that came out would have to be referred back to the Drafting Committee so that some of it could be amended in the proposed Bill if any changes are made. Some of the things we highlighted that we thought should be considered are: The first one (1) was the fact that in the international scheme of things, child care centres should be changed to child protection facilities since internationally a child care centre refers to day care facilities or day nurseries. That is one of the changes, having discussed with my team, that we thought could be considered.

This would go back to the drafters again, where we also felt that abandonment and desertion should be defined and a timeframe for desertion should be included. When we heard the comments of the public and some of the things being said on the call-in programmes, they seemed to believe we would have too much responsibility and their responsibilities would be diminished. In relation to Section 19(5) of the present Bill, the word "moral" is included and we felt, after discussion that it could be removed and just leave it to read:

*"a child in need of care and protection where the child has been exposed to danger".*

The drafter, who is represented here, would be able to speak to that. In relation to Section 19(5)(h)(1)

states in part:

*"A child is in need of care and protection, where the child suffers from a mental, emotional, physical or developmental condition that requires treatment to care, prevent or ameliorate the effects of the condition or harm suffered and the parent does not or refuses to obtain treatment."*

Concerns were raised regarding responsibility and it was suggested by the team that if a child is hospitalised, the hospital should act rather than call on the Child Care Board. The reason why that comes up very often is because as we presently operate, when children are in our care or when a child goes to the hospital to be treated, I think the hospital, as a medical facility, might have a lot of ability and responsibility that they can use to determine, based on their profession and their mandate, how a child be treated. Sometimes when parents do not show or refuse to attend, then they call on us, the Child Care Board, to make a decision and my team wanted a bit of clarity; so I suppose that is something we can discuss as well.

When a child is hospitalised and a parent refuses to give permission for the child to get medical treatment, who is responsible? That was the question of the team and in relation to that the follow-up was that clarity needs to be provided on the role of the Queen Elizabeth Hospital (QEH) and the Child Care Board as it relates to medical neglect because these are concerns that were raised. As it relates to the removal of a child by the Director and we are now moving to Section 31 on Page 40, it states:

*"Where the Director has reasonable grounds to believe that*

*(a) the health or safety of the child is in immediate or imminent jeopardy and*

*(b) there is not enough time to apply to the court for an Order under Section 32, the Director may if necessary with the assistance of a police officer and without the need for further authority other than that conferred on him by this Section, enter any place or premises where the child is believed to be present or to reside, and search for, locate and take the child into custody."*

We discussed this at length in the discussions leading up to the drafting but having gone back and spoken to my team they are still concerned. We have agreed that the word "may" should be replaced by "shall" to give everybody a comforting position to work with.

In relation to Section 30 on page 39, action taken by the Director. It might be a typo but it is felt that the word "plan" should be inserted before ....

**Madam CHAIRMAN:** Are you referring to page 39 Clause 29(6)? "Where a care plan is developed pursuant to subsection (2)(b) that care shall be signed by the parent of the child who is the subject of the care plan."

**Mr. Shawn R. Richards:** Yes please.

**Madam CHAIRMAN:** It was Section 29(6).

**Mr. Shawn R. Richards:** Thank you. The final issue that we want to reinforce are the provisions as they relate to Section 33, page 42, which is the residential protection and treatment centre order.

Section 33 of the Child Protection Bill makes provision for residential and treatment centre order under the Child Care Board. In its current form it is required to admit into care, children who exhibit severe behavioural and emotional issues, and conduct disorders. We continue to deliver the services we have in our present circumstances but more and more, we are seeing children coming into care who are either developmentally an invalid; have not been taken care of in terms of their medical treatment up to the time, and are displaying extreme behaviours. We will continue to care for them but we acknowledge that in our current establishment, as we stand right now, we are beginning to prepare for the amalgamation of four (4) social service agencies.

When these four (4) social service agencies come together, we will have a new entity. I am not sure what the name of that new entity would be but the Child Care Board will no longer be the Child Care Board in its current form and we accept that going forward, we will need to make provision for that treatment facility to treat those children with these developmental issues or challenges, and we see the extreme behaviours that we have to deal with. We are saying that while we know that provision is made for the new entity, we want to be able to deliver services with sufficient manpower and training for the staff for us to continue to treat to these children that come into our care.

Obviously, the fact that they come into our care, it might have been a situation where they might have been neglected or the parents were not able to source or do what they have to do in order to help at that stage and we think that when they come to us, we want to be able to make them better than they were before they came to us.

To conclude, I would say that my team and I, at the Child Care Board, are eagerly anticipating the passage of this new legislation because not only as practitioners but if I were to put another hat on, the level of care orders that we are exposed to in this new legislation gives us much more room to do what we have to do, to better protect and care for the children of this nation. Thank you.

**Madam CHAIRMAN:** Thank you. You may proceed as well since you have the floor, with your comments on the Child Justice Bill.

**Mr. Shawn R. Richards:** In relation to the Child Justice Bill, again my team and I looked at it and the issues that were raised in relation to Section 6(1)(d), page 18, the word there needs to be clarified. The reason behind it is because there are people who are of religious belief; people who are from faith-based organisations; and there are persons who have other beliefs. We figured that some clarity to that could be of assistance.

Reference is also made as another concern, that

throughout the Child Justice Bill, to a secure residential treatment facility. The team is saying that this needs to be clearly defined. The facility needs to be identified as the protection and treatment, definitions and examples are required, for example, children's home, protection facility and secure treatment facility.

In addition, a secure treatment facility is needed for children who present with mental health issues and/or drug abuse or drug related issues.

The final comment from the team is that a timeline should be identified for execution of Court orders. This is one of the things that I would like to suggest as a person who would have practised law. We are having the Bill laid and I know that most times, legislation or Bills come with subsidiary legislation and when we get the subsidiary legislation, more things will be outlined as to the day-to-day policy and practice. As social work practitioners, who are relying heavily on the legislation to help us deliver our day to day duties; we also look forward to receipt of the supportive subsidiary legislation or the regulations that would help us throughout the process and make it more accessible not only for us but also for persons who are going to be going online or even buying a copy of it from the Government Printery, that they can read and see for themselves what it is that we are going to be applying to the care and protection of children in our Barbadian society.

**Madam CHAIRMAN:** Thank you, Ms. Richards and team. At this point, I turn it over to the Chief Parliamentary Counsel for comment.

**Ms. SHAWN RAINE BELLE:** Madam Chairman, just to reinforce the point that the Child Care Board would have been one of the major stakeholders in submitting comments for the germination of a lot of the policy in relation to the drafting of the Bill, so that at the appropriate points then there would have been an opportunity to submit. In as much as you are submitting now, I will respond in relation to certain things.

In relation to the Child Care Centre, in terms of the nomenclature that can be done and once we have the approval of the pilot Ministry in relation to the nomenclature, that can be done.

In relation to abandonment and desertion, those will take the ordinary dictionary meanings attached to those words. If there is a time frame that is needed for desertion, that is a policy issue that needs to be pointed out and given to the Ministry so that the drafter then can include such details.

In relation to the inclusion of the word 'moral', again a policy issue which needs to be communicated to the Ministry and then we will make the necessary removal.

As it relates to the "*does not or refuse to obtain treatment*" or in terms of the responsibilities of the Child Care Board and the Q.E.H. Remember how this section is supposed to be interpreted. It is supposed to give the context in which the intervention of the State is to be made, so that the intervention of the State is articulated by talking about care

and protection and what it is supposed be defined as. Clause 5 (1), a child is in need of care and protection where and then it states the situations where their intervention would be necessary. All the actors including the Director would need to make a determination in terms of the role they will play in assessing the suffering from a mental, emotional, physical condition. If it is that there is another actor that needs to be included in that decision making, again that is a policy decision that has to be communicated to the pilot Ministry. In relation to Clause 31, just one moment. I just need to go to that, I will pass onto the Minister for his comment in relation to this matter. Madam Chairman, through you.

**Madam CHAIRMAN:** Minister, you have the floor.

**Hon K. D. M. HUMPHREY:** Thank you very much, Madam Chairman and thanks to the Child Care Board for coming and for reviewing the document subsequent to the original conversations. This particular Clause was one that benefited from perhaps the most extended and intense conversation; whether it had to be a case where the law should say 'shall' that a police officer 'shall' be present or 'may'. This Bill was possibly the one piece of legislation that we discussed the longest. I recall the original position by the CPC was that it should say 'shall', that a police officer 'shall' be present; but I also recall the position by the consultants who were assisting with the drafting and then the original position of the Board about the use of the word 'may' because there may be circumstances where it is so urgent and that there is no police officer present, that it is so urgent that there is a need to act and then the advice also came from persons who were in social work before, who also said that there could be circumstances where you could remove a child and it may not necessarily be confrontational but if you say you have to have a police officer present, you cannot act at that time either.

So the 'may' allows you to go with the police and to act but 'shall' would mean that you are limited to acting if there are no police present. So that had been the position that caused the original draft to change, so it would be interesting Madam Chair through you, to hear the new position of the Board.

**Madam CHAIRMAN:** Before the Director responds and I make a disclaimer for my lack of knowledge to sometimes the English Language and the language of the law because I was wondering as I heard the submission from the Child Care Board whether they were saying, "The Director 'may' enter any place or premises where the child is believed to be present or to reside, or the Director 'shall'?" I thought that the question of using the word 'may or shall' related to whether or not they can enter any place or premises or as opposed to whether it related to the police because I thought that the words '*if necessary*' related to the assistance of a police officer.

It is just like where the punctuation is that the Director 'may', subject to those things and those things playing in there but if you put dot, dot, dot enter any place or premises where the child is believed to be present. So

the Child Care Board should clarify the concern that was raised in terms of the use of 'shall' versus 'may'. What really is the concern and then, for the Chairman's benefit, the drafters or maybe before the Child Care Board comes in, if you Ms. Belle can clarify as written here, what the Clause really is saying.

**Ms. SHAWN RAINE BELLE:** Madam Chairman, I am communicating, also taking into account the discussions to which the Minister referred, so that the original advice from CPC as would be recorded, is that the use of this particular type of provision would have been unnecessary in the sense that you could apply for an emergency protection order. We did have a meeting in which it was impressed upon me that there were circumstances in fact that were so critical, that you needed to intervene and it would not even have time to apply to a court even though, the proceedings would be *ex parte* and that would be using an emergency method to apply.

We then went through a discussion of making sure that it was not a situation that would be arbitrary which is why in A and B, it specifies the specific circumstances in which you can intervene in this way. The child has to be in immediate or imminent jeopardy and there is not enough time for them to apply for the court under Section 32. Those were the parameters so it is not even an arbitrary intervention.

On top of that, in order to remedy the fact that they did not go to the court in the first place, it specifies in Clause 31 (2) that you are to go to the court within 24 hours and to make sure that you make the application. You are to inform the court to apply to the court and you are also to inform the parent in which case you would then offer the parent the time to appeal. Those are the situations with which you are supposed to tie and clench this particular provision that could potentially be arbitrary but is tied down specifically because you can only apply them in these very specific circumstances and I just wanted to share that. Thank you.

**Mr. Shawn R. RICHARDS:** When I had the discussion; when we discussed as a team, initially the point that you are making Madam Chairman about the removal of the exclamation, so the amended position that we were putting forward at 31 (1) (b) remove 'if necessary' from the Director may and put, "*The Director may, if necessary, with the assistance...*" that is what was the position that was put forward. The whole concern behind this particular section from my team, was the fact that as practitioners going out there to enter and remove, they felt the need that there should be police presence because in most circumstances while the law gives us the authority to do what we have to do; the concern was that the Barbados Police Service should be there to ensure that there is no interference with us performing our duties and doing what the law requires us to do. So that was that situation.

**Ms. SHAWN RAINE BELLE:** Madam Chairman, as a practitioner, you would put in place the necessary mechanisms for how you would execute your duties and

we would have to go back to the discussion. The "may" was only to give you flexibility. If it is that you wanted to and please note, the CPC had issued the warning in the first place, so it must be acknowledged. It just means that you would have to be communicating and saying that your position has changed and you want the police officers to be there but the fact of the matter is, as a practitioner, you can bring them because the "may" does not stop you from bringing them. If you need that ...

**Mr. Shawn R. RICHARDS:** I take the point, but again, my team has often said to me that when a call is made to the police, that we are supposed to go X or Y place to do X or Y, sometimes we are often told, "We do not have anyone available" so we cannot go and because of the ... I know what has been said prior, but I have to be fair to my team as well as what it is that we are going out there to do.

**Madam CHAIRMAN:** Senator Dr. Rogers.

**Senator Rev. Canon Dr. J. A. ROGERS:** Thank you very much, Madam Chairman. I wish to thank Mrs. Richards and her team for the work that they are doing. I am not a student of English but I am wondering if the "may" and "shall" may be referring to different things here and they are having two different conversations because I get the impression that the Child Care Board says, "The Director may enter any place"; you may but they are entering a place with a police officer. Is that what you are trying to say that a police officer must always be with you when you are entering a "place" but you may enter and not "shall".

**Mr. Shawn R. RICHARDS:** Yes.

**Senator Rev. Canon Dr. J. A. ROGERS:** That is the impression that I am getting here.

**Madam CHAIRMAN:** Minister Humphrey.

**Hon. K. D. M. HUMPHREY:** Madam Chairman, just to clarify. The discussion we had was exactly that and it came down to, in the absence of a police officer, can the Board act or not? There are two things: If we are saying that they can only act if the officer is present it would mean that in the absence of police officer they cannot remove a child, even if the child is in immediate, imminent danger.

The position put forward by the team at the time, including the Child Care Board, was that there could be circumstances that are so egregious that require immediate action. The point then that was just made by the Director, which is that oftentimes in the old order, a police officer may not be available. It would mean that if a police officer is not available, the Child Care Board definitely cannot act and it worsens the reality for the child.

The other thing is this. We had conversations with the Barbados Police Service (BPS) and they have asked us to have a meeting so that they can better understand their new responsibilities under the law and to make themselves more available to the Board in these circumstances with that new understanding of the law. My concern, having been influenced by the conversation, because originally in my position and having worked at the Child Care Board was, "shall", when necessary. It was always the case that a police officer should be necessary but then there were



social workers, one in particular who raised the point that he visited a house and saw a mother hanging her child on nails, for example and he took down the child and moved with the child. In that case, what we would be doing would be so limiting that an officer would not be in a position to move, then the compromise we made is the one the CPC suggested which is that in circumstances where you have to act, then within 24 hours, you have to go and justify your position before the Court and to prove, as laid out here, that it was in relation to the health or safety of the child being in immediate or imminent jeopardy. By allowing us to say, if necessary, you can act even if a police officer is not there but it is in the Board's interest to always seek to have a police officer present.

**Madam CHAIRMAN:** I think that, perhaps, I am hearing the conversation being influenced by another hat that I wear. From time-to-time, I am hearing a concern being raised with the safety of the child, being paramount but also the safety of the officer who has to go and remove the child from the premises. I am hearing that there is a comfort level with the presence of a police officer. I am also hearing, by the CPC's explanation that the Director "may", if necessary, with the assistance of a police officer; that is also suggesting that the safety may be assured without having a police officer present and I am wondering if that is provision for private security or so on. That is my layman's view of thing because it would be in response to the concern that is now being outwardly expressed that we are hearing clearly that officers of the Board need to be protected when going into premises because they do not know with what they are going to be confronted.

**Ms. SHAWN RAINE BELLE:** Madam Chairman, what I was actually saying was that as a practitioner, there is nothing preventing you from bringing the police officer with you, if it is that you need to. The context of the discussion was whether you would be prohibited from acting in the specific circumstances, if the officer was not available. Those are the parameters and if it is that you are feeling the comfort level, of course, that is a policy decision but just understand that you would be restricted in the acting.

**Madam CHAIRMAN:** Any other comments on this one from members of the Committee? What we are hearing is a very delicate balancing of obligations and responsibilities and of who is protected at all times as well. I do recognise that Minister Abrahams wants to make an intervention.

**Hon. W. A. ABRAHAMS:** Thank you very much, Madam Chairman. I think it is critical in situations like this that the response must be flexible and the ability to respond must be flexible and determined by the situation. Once we put the word "shall" in there it removes all flexibility. There are some circumstances that require immediate action and "shall be accompanied by a police officer" is going to remove the ability to act in that circumstance. It would pretty much make a nonsense of an immediate response capacity. I believe that the practitioners are trained; they deal with situations and they can evaluate if it is safe to do so and the interest of the child so require; then you should

have the ability under the legislation to take your action. If you do not think that the circumstance is conducive to you going in alone, then you should have the ability to contact the BPS but the flexibility must be maintained in a way that it will not be, if the word "shall" is used. That is my two cents.

**Mr. Shawn R. RICHARDS:** Having heard all of the comments, I am hearing from my team that we should revert to what is there. I thank you.

**Madam CHAIRMAN:** Out of an abundance of caution, the team at the Child Care Board, having reconsidered, is satisfied that the language the Director made should remain, that is, "... may, if necessary ..."

Thank you.

**Ms. SHAWN RAINE BELLE:** Just to continue with the review, it is recognised that this refers really to Clause 29(6) and so if you read, "*Where a care plan is developed pursuant to subsection 2(b), that care plan*" so the word "plan" should be inserted. We recognise that it needs to be inserted. Thank you.

In relation to Clause two (2) which makes provision for the residential treatment care centre. Of course, this particular Section was subject to discussion as well and the main insertion that would have been used in relation to what happens to the person who is less than 12 years old who commits very serious offences and then has to be dealt with because they cannot be dealt with under the criminal justice system; you would then have to deal with him or her under the child care system and the residential treatment care centre was supposed to be the facility where such persons would be dealt with.

There is also the "significant threat to others" and "in need of care and protection" as defined by Clause 39 which is really 40, so that needs to be dealt with in terms of the reference. In terms of "extreme behaviours" this is a new limb that would have to be introduced and this is a policy matter, so if it is that we need to introduce a new limb speaking to children with extreme behaviours, then we would need to intervene.

I would draw your attention to Clause five (5) which speaks to where a child is in need of care and protection, and in relation to where you have "the mental treatment and physical development condition"; where the parent may refuse to obtain treatment or where there is unavailability in relation to consent for services; where there is a mental, physical or developmental condition; the question is whether it would actually fit under there or under any other limb that is there or if it is that it should be properly dealt with specifically as its own limb.

My view is that perhaps we can give you a concession in terms of providing its own limb but it would then have to mean that Clause five (5), as well as Clause 33 would have to be amended to reflect that. Again, this would be a policy decision.

In relation to the Child Justice Bill, we speak to the word "beliefs". Again, that takes on the ordinary dictionary meaning of beliefs and it is why it would then



contemplate as wide as possible an interpretation because you do not know what those particular things are and so in that way, you would then have to appreciate that there needs to be as wide an interpretation as possible, in order to contemplate the many beliefs that people have. In relation to the use of the phrase "secure residential facility", your attention is drawn to Clause two (2), in particular on Page 16. Secure residential facility means a residential facility described under Section 68. We then have to go to Section 68. As you can see, the shoulder notes say "secure residential facility" and in fact, Part 10 speaks to secure residential facility as well as to the management administration operation of those facilities.

In particular, with Clause 68, it provides how this secure facility is supposed to be interpreted, so it means: (a) a residential facility designated under this Act for the purposes of the assessment under Clause 8: Detention of a child prior to or after initial inquiry is conducted under this Act; detention of a child pending trial pursuant to Clause 40; so that is an overlap between the Child Protection Bill and the Child Justice Bill. Reception and rehabilitation of the child who has been sentenced to a term and we were saying that we would not refer to imprisonment but detention or a like-type word under this Act. Residential protection centre for the purposes of reception and rehabilitation of children, who require psychiatric or psychological treatment or treatment for substance abuse pursuant to Section 40 and Section 70.

Section 40 deals with the overlap with the child protection legislation while Section 70 specifically provides for the intervention where the child may have an episode or something like that; in which case the something can be done. It includes the residential, protection and treatment centres and it would be considered for the purposes of this Act but you can see that there is a clear delineation of what is the secure residential facility would be. If there are other issues, you can also see that there was an attempt to speak to the treatment of substance abuse.

In terms of the timelines identified for the execution of Orders by officers: You would have made allusion to this but I would draw your attention specifically – I crave your indulgence, Madam Chairman – to Clause 114. This Act comes into operation on the date to be fixed by Proclamation, so that this gives time for the regulations to be made in relation to specific areas of this Bill that need to be properly operationalised in the minutiae, procedures and so on that might not be best dealt with a piece of legislation coming into Parliament but more at a lower level with subsidiary legislation, which can be more easily changed.

It does not come into operation immediately, it gives institutions like yours the chance to prepare for the new regime that would come in and be introduced by the Child Protection and Child Justice Legislation. The regulations are also drafted during that time and then shortly after Proclamation, the Minister would make the regulations and these would come on stream and be operationalised in the fullest way. Those are my responses in relation to the

submissions of the Child Care Board. Thank you very much.

**Madam CHAIRMAN:** Senator Brathwaite.

**Senator Dr. the Hon. C.W. DaC. BRATHWAITE:** Thank you very much, Madam Chairman. As I reflect on the submission by the Child Care Board and I thank the team for coming and sharing their thoughts with us this afternoon, on the second page of the presentation referring to Page 42, Section 33, the comment is made:

*"The Child Care Board, in its current establishment, will be part of a new arrangement entity. Therefore, it is being recommended that provision be made for the creation of a secure treatment facility which will cater to children with extreme behaviours. This may require additional staff and training."*

My question is, does this mean that this law will not be approved and promulgated until such time as there is approval for the provision of a new secure treatment facility; new staff and training? Or, are provisions already made for these facilities to be available?

**Ms. SHAWN RAINE BELLE:** Madam Chairman, it makes provision for those things to be put in place. There are some things that are already in existence and if you would recall, in the review of the Child Justice Bill, in relation to the specific provisions, you would recall that the reformatory school would have been considered for the purposes of this legislation to be the secure residential facilities. Those systems are already in place but the Bill also contemplates that there would be a need for other facilities to be established.

As I would have already articulated just now in relation to the Bill not coming into operation until all is ready, that is not an unusual situation. You do not want a situation where you proclaimed the Bill and then everybody is scattered and do not know what is going on. It gives all entities an opportunity to prepare themselves so that when it is fully operational, they will be ready. It does not mean that it has to be forever and in fact, it does not contemplate forever; it just means that it will give you the chance or give the institutions the chance to put the necessary measures in place, including the regulations and including any administrative matters that would be taken into account including staffing and infrastructure. Thank you.

**Madam CHAIRMAN:** Senator Brathwaite.

**Senator the Hon. C. W. DaC. BRATHWAITE:** Madam Chairman, I just want to comment on the context of enthusiasm that can arise from staff seeing the possibility of a reformed institution. New arrangements; new facilities and new opportunities for them to grow and to develop and where you have a delay in the implementation of decisions that are made, that can have a negative impact on morale and on the enthusiasm of staff. I am just wondering whether it is fact, there is a coordination of actions in terms of the legislation and the provision of the facilities that are

necessary for the implementation of the said legislation. Those are the reasons for my comments.

**Ms. SHAWN RAINE BELLE:** Madam Chairman, as you can fully appreciate, CPC is not in charge of that; it is the line Ministry that would be responsible for that. Minister Humphrey would be here for that. In relation to the coordination of all the entities and all the things that would be needed, including the instructions for the regulations, although in anticipation of this matter, the office had put forward before, some recommendations into the direction it should take, but it is the line Ministry that is responsible for coordinating all of that. Thank you.

**Hon. K. D. M. HUMPHREY:** Just for clarity. There are two (2) centres being proposed. In the Child Protection Legislation, we were considering the residential protection and treatment facility which would be in relation to persons who were under the age of 12 who would have committed a crime and persons who having had conversation in the initial stage of the magistrate informally may be somebody that they divert to this particular facility. There is another facility which was a secure residential facility for persons who would have really committed a crime; who traditionally would have ended up in one (1) of the penal institutions, like Dodds. There are two (2) facilities.

In relation to the residential protection and treatment facility, this is meant for those children under 12 and persons who are not really criminals but who perhaps could have been hungry and committed a crime; who when you look at the circumstances there is reason to give them an opportunity that does not bring them into direct contact with the justice system.

The current reality of the Child Care Board is that they cannot cope with this because even some of the children now who are of a certain age exhibit such deviant behaviour. Some are sent by the Court but exhibit deviant behaviour that is outside the capacity of the persons who work in that system to give them the necessary care and attention. It is very clear that we need a separate facility. We have already started looking for a facility; a place where we can establish that this is a residential protection and treatment facility. The idea here would be to treat to the issues of the child and not criminalise the child.

In that facility, hopefully we will be able to offer the level of care and assistance and service that they need. It is not contemplated at present that the staff at the Child Care Board as currently constituted will be able to do this. We know that we are going to have to hire new staff. We know we are going to have people with different competencies and it also eases the Child Care Board because they are currently some children in the Child Care Board who really should not be there because they exhibit such behaviours that they are not fit for there; but they are not criminals. This facility in that context, makes a lot of sense but it is going to be separate from that secure facility for persons who would have committed a more serious crime.

**Ms. SHAWN RAINE BELLE:** Just for clarity, just

remember that the Child Protection Bill is being piloted by the Ministry of People Empowerment and Elder Affairs and then in relation to the Child Justice Bill, it will be the Ministry of Home Affairs and Information. They will be responsible for putting those things in place.

**Madam CHAIRMAN:** During our examination of written submissions, there was one (1) particular submission that made reference to diversion. The Child Justice Bill starting at Section 33, makes reference to a process of diversion. As it stands, the process contemplates that a magistrate will have initial meetings with the child to determine if diversion then should become necessary. One of the submissions proposed suggested that this is putting the cart before the horse and it would be better that not a magistrate but a Board, with trained specialists like yourselves, social workers, psychologists, and so on; will be put in place to determine whether diversion is necessary to alleviate a child having to stand before a magistrate and happen to be in the system.

Although as the Bill is currently outlined, there is no intention for anything used in that informal process to be used against the child further on. It was proposed in a written submission that it would be better for a Board to consider the particular case and then determine whether or not the process of diversion would apply. What is your view on that as practitioners in the field?

**Mr. Shawn R. RICHARDS:** There was a written submission that was put before you in relation to having that particular child seen by a Board as opposed to going before a magistrate. I have not practised criminal law so I will not go there but one of the things that I would want to say, is that while it might be useful; I think that how our Courts are presently set up, we have a Juvenile Court and children who come into conflict with the law, they are seen in the Juvenile Court.

I also recall that in instances we have gone to the Juvenile Court in matters relating to children, whoever is in the precincts of the Court, they are asked to exit the Court when the particular child's situation is dealt with. I think that we have magistrates in our system who speak to children, not just in the capacity of a magistrate but as that caring professional; so I would want to give it further thought before I just come to say well a Board should be established and the child not go before a magistrate. I mean there might be instances where you might be able to look at both but as it stands right now I would not want to say well have a Board; we do not have a Board yet.

Right now, we deal with magistrates and I could think of a few magistrates who have; even a few judges who have spoken to children in that caring way without using that against them or in the scale of things but I would want to say that I want to give it more thought or discuss it more among my team and the fact that we do not have a Board and if it is something that we can write on and deliberate further on, we could submit that at a later stage.

**Madam CHAIRMAN:** Well, up to now we have been hearing CPC respond that some of your proposals should

be the subject of further policy decisions coming to them, so I just raised the question because then it may be entirely possible where there is not currently a Board that it could be a policy decisions coming out of these discussions that may be a Board is necessary for that purpose and this is not to say that some magistrates, as you have said, would not speak to children in a caring way but I think the background of the submission was that a child should not have to be in the court system at all, until it is established that the particular case needs to be in the court system. Ms. Belle?

**Ms. SHAWN RAINE BELLE:** Yes, Madam Chairman and I feel the need to reiterate. The Bill makes it clear that the initial inquiry in which the diversion decision will be made is not to be considered to be a criminal proceeding. In fact, it is even stated within the Bill in terms of the diversion, that it is designed to prevent stigmatisation and the consequences flowing from the subject being before a criminal justice system and also, it would prevent the child from having a criminal record. That is what the initial inquiry and the diversion mechanism was supposed to facilitate. In terms of, and I raised the point in our discussions of the written submissions, the magistrates are given guidance in terms of how to conduct these initial inquiries including the fact that they have to be conducted in an informal way and in a child-friendly way. To the extent that magistrates also operate within the Juvenile Justice of their jurisdiction, they would have had the training and experience to deal with children and in as much as the Bill makes it clear that this mechanism is not to be considered a part of the court mechanism or procedures; it makes it clear throughout and that at no time during that period would it be considered a record. I needed to take the time to emphasise and to understand the model that was placed and the fact that it was embraced by all stakeholders which would have included the Child Care Board. Thank you.

**Madam CHAIRMAN:** Minister Abrahams.

**Hon W. A. ABRAHAMS:** Thank you, Madam Chairman and thank you, Ms. Belle. I think we have to be careful of adding layers or unnecessary layers to a process. I believe the concerns of all can be addressed by ensuring that the magistrates have very specific training that put them in a position to deal in a humane way with these interventions and these inquiries. If we try to divert or subvert the jurisdiction of the magistrate; you start to look at other broader constitutional issues. If someone is arrested by the police or is in custody of the Police Service, you are supposed to be in court by a reasonable time, that sort of thing. If you actually start to add layers in that; then we might find ourselves in a complicated process and we may actually hinder the same process, we are trying to improve upon.

I believe that everyone, at every level, has to be trained appropriately for the task that they are expected to carry out and I believe a lot of the concerns can be addressed in ensuring the magistrates who have jurisdiction over these children have the requisite training. If everyone is satisfied at that then the other issues do not

necessarily arise.

If everyone understands their role; our role is to keep the children so far as possible, out of the formal judicial system. Our role is so far as possible, to keep them from having to go to a trial. If everybody understands that and is trained with that in mind -- and I do not mean just legal training and judicial training. I mean they must undergo some kind of child psychological type training; then I believe that those concerns are more than adequately addressed. I am very hesitant to add further layers because then if we just keep piling layers to cure a problem, we will have unwieldy system.

I hear you loud and clear and if you actually go into the juvenile court; you realise the policy right now with the magistrates or those who deal with children is as much as possible to try to resolve the issue as opposed to send a child through a trial. Everybody knows what we are trying to accomplish with these pieces of legislation and I do believe that training those that are involved in the system cures most of the ills other than putting other layers on.

**Madam CHAIRMAN:** Since I do not see an indication for any further comment, I do see an indication from the Deputy Chairman. Senator King

**Senator J. A. KING:** Thank you, Madam Chairman. I think one of the things that we missed here though when dealing with that particular submission. I think the author of that submission was not speaking specifically to the inability of the magistrates or any of the persons involved to handle children in a particular way. I think they were making the point about the environment itself; exactly where you are going to do the interviews. Are we going to do them within a judicial or court system or wherever and then have a child then know that one of the persons in it is actually a magistrate? I think the point that Mr. Hoppin was trying to make, was that he felt that psychologically, just having the child before a magistrate, would create some sort of a problem. I just wanted us to be clear on that aspect of it.

**Madam CHAIRMAN:** That is even though it is clear that the magistrate does not have to see the child in court. It may be out of court but the very fact that it is before a magistrate.

**Hon W. A. ABRAHAMS:** Once again we go back to the question how did the child get there? If the child is coming to the attention of a magistrate, it means that a criminal act has been committed. We have to measure what we are doing with our systems.

There is a process and once you engage the attention of the police; pursuant to a criminal act the next step is before a judicial officer. If we attempt to pull that jurisdiction away and put another layer or a group of persons, then it has implication for the whole structure of the criminal justice system.

I hear you loud and clear but we still need to treat it with the seriousness which it warrants. We recognise that we are here pursuant to a criminal act. We do not want you

to be here. You do not want to be here but as you are here, let us deal with it in the most child- friendly way while allowing you also to accept that it is a serious situation that you are dealing with. Having said that, we will have to work it out one way or another.

**Madam CHAIRMAN:** Thank you, Minister and with that, I am definitely not seeing any further indication for an intervention at this time, so I wish to thank the Child Care Board for first of all, reviewing the pieces of legislation, having sat as a party to them.

I noted with interest that you indicated hearing all of the public comments and so on; you had your ears to the ground because very often when we are in a process, sometimes you have to step back and listen to see where there might be areas for further tweaking and the submission this morning certainly reflects that was the stance that your team took in reflecting on the two pieces of legislation for discussion before us.

We do take on board the fact that there are some things that may be relevant. The issue of diversion; the definitions although we accepted that their ordinary dictionary meanings, whether there needs to be clarity, for instance, as it relates to desertion and time frames and so on and all of these will be taken on board. We anticipate that you would be submitting, through the line Minister so that CPC gets the final guidance that it would need to address these matters.

One important thing came out, that was the concern of the Committee as well was that the time between these pieces being passed in Parliament and then the proclamation. It should be adequate enough to address your concerns that you raised and those that were reiterated by the CPC that all persons will have sufficient time. That is in the Courts; the Child Care Board which will not then be the Child Care Board but all establishments will have the time to be trained in how to give full implementation to the pieces of the legislation and that further users in the community and so on would also be sensitised as to the changes in the pieces of legislation.

Again, I thank you very much for taking the time to present to us today and for taking further time to reflect more fully on some of the exchanges that we have had. Thank you!

**Mr. Shawn R. RICHARDS:** On the behalf of my team and I, I would like to say thanks for accommodating us.

**Madam CHAIRMAN:** You are most welcome.

That brings us to the end of this submission and we have one (1) final presentation to consider as a part of this session and that is with the Barbados Bar Association.

*Asides.*

**Madam CHAIRMAN:** I am recognising the President of the Bar Association, Mrs. Kaye Williams; Ms. Margo Greene, Senior Counsel and Mrs. Peta-Gaye Lee-Brace, all of whom will be contributing to the discussion. Your

presentation this morning before the Committee is proposed for 15 minutes and then that will follow a period of discussion. We have not received a written submission, so I imagine that you will be able to present within that time-frame but just quickly before you begin, I will introduce members of the Committee. Starting to my right is: Deputy Chairman of the Joint Select Committee, Senator King; to my left is Senator Rogers; Senator Brathwaite; Miss Cynthia Forde and I am the Chairman of the Committee, Toni Moore. Other members present in the room are: Minister Kirk Humphrey, who is responsible for the Ministry of People Empowerment. We have another Committee member back online, the Honourable Corey Lane. Also present in the room is Minister Abrahams, Minister of Home Affairs. The Ministers are the line Ministers responsible for the Child Protection and the Child Justice Bills. We also have Ms. Shawn Raine Belle, acting Chief Parliamentary Counsel, whom I am sure you are all familiar with. Over to you, Ms. Margo Greene, for your submission.

**Mrs. Kaye WILLIAMS:** Good afternoon, Madam Chairman. We are grateful for the opportunity to be presenting here today. My name is Kaye Williams of the Barbados Bar Association. Allow me to introduce Ms. Margo Greene and Mrs. Peta-Gaye Lee-Brace; very important because they are senior practitioners in the family law area and we are grateful that they are here today. We will not be able to go through the two (2) Bills with great detail, as you will appreciate but we will raise certain areas of concern that we have and then we will follow with our written submissions. Thank you.

**Madam CHAIRMAN:** Thank you.

**Ms. Margot GREENE:** Thank you. Good afternoon to everybody. I will start by dealing with the Child Protection Bill. What we propose to do is go through Section by Section as far as that is possible and make comments and then we will listen to your questions and try to answer them.

First, let me say that this legislation codifies in some respects, some of the practices which are now ongoing in the Family Court but it also introduces quite a lot of new ideas and novel approaches to how one deals with children, which we have found quite interesting. What we propose to do is a comprehensive, written submission for you if you wish it at a later stage but the notification came too late for us to go through it and do it within the time that you asked. I will start with the Definition Section of the Bill and if you do not mind, I will go by page numbers to make it easy.

On Page 11, the definition of "child". I notice here that child is defined as a person who is under the age of 18 years. What concerns me about this definition is that, there are other pieces of legislation that allow someone who is under the age of 18 years to participate in what would normally be regarded as adult activity. Under the Marriage Act, a person who has attained the age of 16 years can get married which, as you would appreciate, is certainly an

adult activity. A person who has attained the age of 16 years can consent to sexual intercourse, so I would think that we need to look again at the definition of child. Even though it accords with the Family Law Act, there are other pieces of legislation with which this definition would conflict and if we are dealing with all children and not just children who are born to married parents or parents in a union other than marriage, as happens under the Family Law Act, then we need to make the definition a lot broader than simply a person who is under the age of 18 years.

I next go to Page 13 and in looking specifically at the term "emotional abuse", we had a difficulty with the definition of emotional abuse causing psychological pain. I do not know how that is going to be proved. I imagine that in order for that to be satisfactorily proven, you would have to have psychological intervention by a psychologist. You would also have to go on to prove that that psychological pain would cause significant harm. We also had a difficulty with the term "financial abuse". It is defined as "the exercise of control by a perpetrator over a child's access to financial resources through coercion; deception or intimidation; the effect of which is to hinder the ability to maintain a child and includes withholding the financial support necessary to maintain a child". We have a difficulty with the second part which reads "and includes withholding the financial support necessary to maintain a child".

Normally, financial support necessary to maintain a child is given to the parent or guardian of the child and not to the child directly. We thought that financial abuse would mean something more directly affecting the child, such as if that child was a beneficiary of a Trust or had earned money in his or her own right and someone was trying to deprive the child of access to that money; that would more be financial abuse as it relates to a child rather than withholding financial support. I believe, 45 per cent – if not a larger percentage – of the men in Barbados would be guilty of this if you allowed this definition to continue, from what I see in my practice.

"Physical abuse" is on the next page. I found the definition of "parent" to be interesting, since it starts out only with "any person in law liable to maintain a child or entitled to his custody" rather than simply a person to whom a child is born. Do you become a parent simply because you have a liability to maintain? That seems rather broad to me. The "adoptive parent" as well as the "guardian" stand to reason. I am not sure under the definition of "physical abuse" why we speak of an "act or omission". I cannot think of any omission that is likely to cause physical abuse so maybe the drafters of the legislation need to look at that again.

*Asides.*

**Ms. Margot GREENE:** Another part of the definition that we had a problem with was "any act or omission ... which causes pain". We consider that to be far too wide and too

vague.

**Madam CHAIRMAN:** This is on Page 14, under physical abuse?

**Ms. Margot GREENE:** Yes, Madam Chairman. We also did not understand why bullying was under physical abuse, so we thought that we needed to look at that again. I do not think that bullying is always or mainly physical or if it is physical at all.

The next Section that we looked at is Section 3(2) at the bottom of page 16, "in determining what is in the best interest of the child, the following matters should be taken into account", and recites (a) to (j). What we were concerned about was (e) on page 17, the views of the child. In as much as you defined child as anybody who is under the age of 18, this could be a six (6); four (4) or 10-year-old. We thought that there should be some kind of guideline as to what age you would be looking at the views of the child because views of children who are immature are really very young; may not necessarily be of any interest or any help to anybody who is contemplating what should be done with them.

If you want to use for example the Family Law Act; a child was allowed to have a say in where he or she lives or with whom he or she lives at the age of 16, in as much as this Act covers far and wider circumstances than the Family Law Act, you might wish to look at a younger age but we thought that there should be some kind of age limit, where you look at the age of the child.

Similarly, in Section four (4) on page 17, where it says, "The following principles shall be applied in the administration of this Act: (c) where a child is able to form his own views on a matter concerning his safety or welfare; (i) he shall be afforded an opportunity to freely express his views." Again, we felt that there should be an age limit or some kind of guidance as to whether this should happen and also how it should happen; how are we going to extract those views from this child? We felt that that section was too vague.

On page 18, Section 4 (e), "where a child is temporarily or permanently deprived of his family environment or cannot be allowed to remain in that environment in his best interest; (i) the child shall be entitled to special protection and assistance from the Government of Barbados."

We are not sure what that means since I felt that all children should be entitled to the special protection and assistance from the Government of Barbados. What does it mean by special protection? That may be regarded as discriminatory but I think perhaps you need to look at that again. Or, are children only intended to special protection if they are removed from the environment in which they normally live?

Further down on page 18, Section 5 says, a child is in need of care and protection where the child

- (a) *does not have a parent;*
- (b) *does not have a parent who is fit to exercise care or guardianship owing to mental or bodily*

disease;

I would hope that this Act would go on to define probably in subsidiary legislation, what would be a mental disease. I think that is rather broad. I can understand a physical or bodily disease but a mental disease?

On page 19, Section 5 (f), where the child "*has been exposed to danger, moral or otherwise;*" We felt that it was too vague. We were not quite sure and could also be subjective, what is meant by moral danger. At Section 5 (g) where the child, "*has suffered physical, emotional or psychological harm caused by being exposed to domestic violence by or towards a parent or other person residing with the child.*" We felt that in this section, both the perpetrator of the domestic violence and the victim of domestic violence could be equally punished by having the child removed from their care. We do not think that this would be fair to the victim. The 'towards' meant that if you just witnessed, let me not be gender biased. If you just witnessed your mother beating your father, then possibly it is your father who is the victim, going to be deprived of your company when he or she is not the person to blame? We felt that this section could lead to unreasonable and unfair consequences.

I was going to comment on Section 5 (h) but I am not going to bother with that, that will take too long.

**Madam CHAIRMAN:** Ms. Greene.

**Ms. Margot GREENE:** Yes Madam Chairman. Am I finished?

**Madam CHAIRMAN:** No. I do recognise that 15 minutes is upon us and it would seem to me I have not seen your submission but you are now scratching the surface. Your submission is very granular and I do apologise that six (6) weeks seemed not be long enough, which scares us for you to submit your submission.

**Ms. Margot GREENE:** The six (6) weeks fell within the Court holiday when all of the litigators go on holiday.

**Madam CHAIRMAN:** Pardon.

**Ms. Margot GREENE:** We are litigators, hence all litigators, we are on holiday.

**Madam CHAIRMAN:** I do not know what holiday is, so tell me about it.

**Ms. Margot GREENE:** Do you want us to speed through it?

**Madam CHAIRMAN:** No. What I am thinking is that it may be more useful for the process because we are doing oral presentations again next Tuesday; that is the last day that we have assigned for that. If your written submission can be put to us because naturally CPC also will have to be responding and Members of the Committee will have to be responding; it would help the process if we can see it.

**Ms. Margot GREENE:** Okay. That can be done because we have already started to write it out.

**Madam CHAIRMAN:** Then we would need time to be able to review it. Would you be able to have your submission available to us by Thursday?

**Ms. Margot GREENE:** What is today?

**Madam CHAIRMAN:** Today is Tuesday.

**Ms. Margot GREENE:** Yes.

**Madam CHAIRMAN:** Then Members of the Committee will have ample opportunity to consider it and to be really fair to you and the process as well. Since that is agreed.

**Mrs. Kaye WILLIAMS:** Madam Chairman, if I may through you ask a question?

**Madam CHAIRMAN:** Yes please.

**Mrs. Kaye WILLIAMS:** If there are any particular areas of interest that you may have had through your various sessions and you would wish us to identify our views as attorneys, we would be grateful as well. I know our submissions are line by line but if there are any questions in any particular areas that you would be interested in hearing from us, please let us know. Thank you.

**Madam CHAIRMAN:** Will do. Actually, I have a question lined up for you and one that I raised with the Child Care Board as well. I would wish you to review the position of diversion for your views. We had it in a written submission, where it was considered by the submitter that the process of diversion should not commence before a magistrate; notwithstanding how informal that process is intended to be. That psychologically it may be useful for the child to come before some other body before starting it at the magistrate although it is not intended to have consequences on the child and so on. There are some views that have been expressed so far but I would be interested as Chairman to hear the Bar Association on this.

**Ms. Margot GREENE:** I would like to ask a question myself although I know I am not supposed to. In as much as you want this piece of legislation to be in accordance with the International Treaties to which Barbados has acceded, have you given any thought to whether or not this piece of legislation will take into account the provisions of The Hague Convention?

I noticed that the body that is created here is called "the Authority". The body that is usually created under The Hague Convention is the Central Authority and the Central Authority which we were told when Barbados acceded would be Child Care Board would assist those persons who have to deal with children who are abducted and brought to Barbados or abducted and taken away from Barbados. Our question here, bearing in mind some of the provisions in this legislation would be, whether or not we contemplated having this Authority being also name the Central Authority under The Hague Convention.

You might be surprised to learn that Barbados; we have done quite a few kidnappings, well what we would call kidnapping cases and if there was a Central Authority from which it could be done for Barbadians, they would be in a far better position than we are at present when there is none because it is an exceedingly expensive procedure, if you have to go person to person as opposed to State to State and here I think in Section 52, you have a section about being able to seek out children who have been taken away illegally. I was wondering if that was in contemplation of

making this the Central Authority or if this session could perhaps raise a possibility that that can now happen because we really do need a Central Authority in Barbados.

**Madam CHAIRMAN:** Ms. Belle?

**Ms. Shawn. R. BELLE:** Madam Chairman, just to draw the attention of the Commission and the Bar Association to Clause 67, where it is indicated that there is going to be the transition of the Child Care Board into the Child Authority, so that within those provisions it is anticipated that they would be the authority for the purposes of The Hague.

**Ms. Margot GREENE:** Oh very good. Glory be. We need that desperately.

**Madam CHAIRMAN:** Thank you. To Ms. Hinds and Ms. Greene and Ms. Williams. I just want to thank you and we look forward to your full written submission.

**Ms. Margot GREENE:** So we do not have to come back?

**Madam CHAIRMAN:** Yes. Notwithstanding the written submission, I am sure that there would be areas for clarification and exchange that may facilitate the process so we do not want to limit you to the written submission.

**Ms. Margot GREENE:** Very well Madam Chairman.

**Madam CHAIRMAN:** So next week Tuesday, 26 September, 2023 at 12:45 p.m.

**Ms. Margot GREENE:** So we have to come back. I deliver the written submissions to you on Thursday and return on Tuesday. Very well Madam Chairman.

**Mrs. Kaye WILLIAMS:** Thank you, Madam Chairman.

**Madam CHAIRMAN:** Sorry about that. Was there a question?

**Ms. Margot GREENE:** Not from here, Madam Chairman.

**Madam CHAIRMAN:** Ok sorry. It was just a clarification regarding the time. So 12:45 p.m. next week Tuesday, 26 September, 2023. Thank you.

**Ms. Margot GREENE:** Thank you

**Mrs. Kaye WILLIAMS:** Our thanks to you, Madam Chairman.

**Madam CHAIRMAN:** Thursday, close of day for the submission.

**Ms. Margot GREENE:** Pardon me, Madam Chairman.

**Madam CHAIRMAN:** Thursday, the close of day for the submission.

**Ms. Margot GREENE:** I am aware Madam Chairman. I am aware. I am well aware.

## ADJOURNMENT

**Madam CHAIRMAN:** Okay Committee. Before we adjourn, is there any other business. Seeing none. I wish to thank you for what I believe was a very useful session for today. We continue next Tuesday, 26 September, 2023, commencing at 10:00 a.m. and you are reminded that that session next week is an all-day; contemplated for a full day's work. We look forward to seeing you then. Is there a

motion to adjourn the meeting?

*A motion for the Meeting to be adjourned was done by the Deputy Chairman Senator J. A. KING, seconded by Senator Rev. Canon. Dr. J. A. ROGERS.*





**FIFTH MEETING OF THE JOINT SELECT COMMITTEE (STANDING)  
ON SOCIAL SECTOR AND THE ENVIRONMENT  
ON THE  
CHILD PROTECTION AND CHILD JUSTICE BILLS, 2023  
HELD IN THE SENATE CHAMBER, PARLIAMENT BUILDINGS  
TRAFALGAR STREET, BRIDGETOWN**

**TUESDAY, OCTOBER 03, 2023**

**FIRST SESSION 2022-2027**

**IN ATTENDANCE**

**Ms. TONI N. S-A. MOORE, J.P., M.P. (Chairman)**  
**Senator JOHN A. KING, B.S.S. (Deputy Chairman)**  
**Mr. TREVOR A. PRESCOD, J.P., M.P.**  
**Miss CYNTHIA Y. FORDE, J.P., M.P.**  
**Hon. COREY A. LANE, J.P., M.P.**  
**Senator Rev. Canon Dr. JOHN A. ROGERS, B.Sc.,  
B.A. (Hons), M.Phil., D.Th.**

**ABSENT:**

**Senator Dr. the Hon. CHELSTON W. DaC.  
BRATHWAITE, Ph.D.**

**ALSO IN ATTENDANCE:**

**Ms. Beverley S. GIBBONS (Deputy Clerk of Parliament)**  
**Mr. Nigel R. JONES (Deputy Clerk of Parliament)**  
**Ms. Shawn Raine BELLE (Chief Parliamentary Counsel  
(Ag.))**  
**Miss J'anne C. GREENIDGE, (Typist) (Journal  
Department)**

*The Chairman called the meeting to order at 10:35 a.m.*

**Madam CHAIRMAN:** This meeting is called to order. I do recognise that we have some representatives from the Child Care Board here as well. Just as housekeeping, before we begin, if everyone can remember to ensure that our phones are on silent or on vibrate.

This morning, we are going to be receiving evidence from a number of parties, three namely but before we get into that we need to approve some Minutes. We would want to review the Minutes of the meeting held Friday, 15 September, 2023. I want to take the Minutes as read and will therefore be entertaining if there are any amendments to the Minutes in whatever form. Item 1, 2, 3, 4, 5, 6, 7 and 8. Hearing no amendments to the Minutes, can we therefore receive a motion to approve said Minutes?

**Senator J. A. KING:** Madam Chairman, I ask that these Minutes be adopted.

**Senator Rev. Canon Dr. J. A. ROGERS:** Madam Chairman, I would like to second that.

**Madam CHAIRMAN:** Thank you. Can we receive a motion for the Minutes for Thursday, 19 September, 2023, to be deferred to a subsequent meeting?

**Senator J. A. KING:** Madam Chairman, I ask that those Minutes be deferred.

**Hon. C. A. LANE:** I beg to second that, Madam Chairman.

**Madam CHAIRMAN:** It brings us to that point on the agenda where we are ready to receive oral presentations. The first presentation is that by Family-Faith-Freedom, Barbados (FFFB). Mr. Hutson Inniss is the Director and I believe that he is here. We would wish, at this time, to welcome him into the Chamber.

*(The members of the Family-Faith-Freedom, Barbados were ushered into the Senate Chamber)*

**Madam CHAIRMAN:** We wish to acknowledge and welcome the representatives of Family-Faith-Freedom, Barbados (FFFB). At this point in time, we take the opportunity to remind you that your oral presentation is not to exceed 15 minutes; I believe, you are prepared for that. I would take this opportunity to turn to Mr. Hutson Inniss to introduce the other members of your team, Sir.

Thank you!

**Mr. HUTSON INNISS:** Good morning to all. Madam Chairman; members of the Committee; Senators and Members of Parliament. Thank you very much for giving us the opportunity to be here this morning. My name is Hutson Inniss; I am the Executive Director of Family-Faith-Freedom, Barbados (FFFB). On my left is Davida Maynard-Holligan. She is a practising attorney-at-law and she is also the Community Outreach Officer of Family-Faith-Freedom, Barbados (FFFB). To her left, is Reverend Carl Barker who is a Senior Pastor of Shalem Evangelical Church and he is the immediate past Vice Chairman of

Family-Faith-Freedom, Barbados (FFFB). I am not going to make the presentation, Mrs. Maynard-Holligan will; so I would be grateful if you will start your timing, Madam Chairman, only when she starts to speak.

**Madam CHAIRMAN:** Very well, thank you and Mrs. Maynard-Holligan, I take the opportunity to remind you that the session is being streamed so as you present to us here in the Chamber to the Committee, you are also being viewed as widely as we are streamed. Your time begins now.

**Mrs. Davida MAYNARD-HOLLIGAN:** Good morning to all. Family-Faith-Freedom, Barbados (FFFB) is registered as Charity number 1447, under the Charities Act. We are a Christian organisation supported by members of many Christian nominations. Our aim is to seek to transform our society by promoting truth according to the dictates of the Bible; by fostering strong natural families and by building healthy communities.

We will, in this presentation, primarily examine the purpose of the Child Protection Bill and the Child Justice Bill. We opine that specifically with regard to the Child Protection Bill the language is too wide. We encourage the review of definitions including but not limited to: the definitions of “emotional, physical and financial abuse”. There are also critical definitions missing such as the definitions of “harm” and “danger”.

Further, we strongly encourage that a definition be given to “moral danger” as there could arise a direct conflict between Section 5(f) which introduces the concept of moral danger and the established doctrine of parental rights which vest in the parent, the authority, to determine religious faith and associations of their children.

We say that the role of the legislature is to construct the road and to provide clearly marked guidelines as to its boundaries. The judge is to ensure that we stay on that road. The role of the judiciary is separate. Hence we ought to ensure that at this stage all areas of ambiguity, conflict and legal lacunas are aptly addressed and/or rectified. These are not matters for judicial interpretation.

Madam Chairman, let us look specifically at the purpose of the two (2) Bills. We do not subscribe to the view that the confusing features of sexual orientation; gender identity and transgenderism that have become commonplace in the United States of America (USA), Canada, Europe and Britain, are simple features of a foreign culture being played out in foreign jurisdictions and that we need not concern ourselves with these developments here in Barbados as some persons have suggested.

We have seen the early signs in Barbados. For instance, we have seen a transgender student at a secondary school insist on being accommodated as being of a gender other than his natural birth gender. At our University of the West Indies (UWI), there has been tabled the notion of accepting an individual’s pronouns of preference according to the individual’s chosen gender identity. We have seen the successful challenge of our Sexual Offences Act. These

are but early birth pains.

Our laws will be tested. These Bills, when enacted, will be tested. In their current form, they fall woefully short of giving us as citizens the assurance that our treasured cultural, social and religious norms will be protected. We see very clearly the evidence of this gender ideology being promoted intentionally by the United Nations organisations; through the very instruments that we have signed on to and this is why we are so strident in cautioning the drafters of our legislation against stating in Section 3(1)(a) of the Child Protection Bill and Section 3 of the Child Justice Bill, that the purpose of the legislation is to ensure compliance with not only the specific Treaties listed in the Bills but with all international instruments to which Barbados is a party. The fact that this is stated as the primary purpose of the Bills weakens any argument we may later wish to make in the cause of making exceptions to accommodate the particular sensitivities of our local, cultural and social norms.

It is our opinion that the international gender lobbyists will not relent in the pursuit of their intention to infiltrate our laws as they seek to promote the facilitation and propagation of the gay lifestyle and transgenderism.

We gave an example in our written submission of the legislative conundrum which can be caused. We stated that in response to a request for clarification by Costa Rica on the question of rights relating to the marriage of people in same-sex relationships, the Inter-American Court of Human Rights issued an advisory opinion on 24 November, 2017, stating that sexual orientation and gender identity are categories protected by the Convention on Human Rights which Barbados has ratified; in which all states must recognise and guarantee all the rights that are derived from a family bond between people of the same sex.

Not only will our general legislative framework continue to be challenged but with this ideology we fully anticipate there will be pressure on Barbados to amend our laws to facilitate such interpretations, including ultimately the gender transitioning of children. Now in discussions on the Child Protection Bill, it was stated by this very same Joint Select Committee two weeks ago that the Bill does not contemplate the handling of the issue of sexual transitioning of children and that the Bill does not provide for, or speak to, the sexual transitioning of children.

The Child Protection Bill does not speak specifically to sexual transitioning but it does not need to in order to be utilised for this purpose. The application of the Bill to sexual transitioning is tantamount to the concept discussed before this Committee two weeks ago during the discussion with the Barbados Bar Association on the Bill, speaking on the abduction of children from another jurisdiction being brought to Barbados under The Hague Convention. There is no great difference between the two applications. In both circumstances, we have a Convention impacting its intent and its provisions upon our local courts and jurisdiction as a result of Clause 3(1)(a) of the Bill.

We note that the words which apply to The Hague Convention do not specifically appear in the Bill. For instance, abduct does not at any time occur in the Bill. Nevertheless, the construct and language of the Bill together with the parameters of operation given to the Child Protection Authority will allow the Authority to exercise its powers in accordance with convention. The Hague Convention has a noble purpose but our point must not be missed. The application of a convention activates the structures created in this Bill, so that they can and will be used to further the objectives set out in a Convention; *vis-à-vis* sexual transitioning.

The Bill becomes the legal framework for the operation of the Convention for the sexual transitioning of minors. How can the implication of international convention allow such, you may ask? The interpretation, guidance and advisory opinions given by the treaty bodies and the rapporteurs with respect to international instruments are changing rapidly. Here are some examples: The Universal Declaration of Human Rights now enshrines sexual orientation to all individuals, including children, in all modern references and interpretations even though this concept did not exist when the Treaty was declared.

The United Nations Human Rights Council's report on protection against violence and discrimination based on sexual orientation and gender identity, argues for abortions and transgender-affirming treatments and surgeries, including treatments and surgeries to children. The World Health Organisation Human Reproductive Programme publication entitled 'Sexual Health, Human Rights and the Law' states that countries are required to guarantee adolescence and they define adolescence as children from ten (10) years of age to 19; the rights to privacy and confidentiality by providing and sexual and reproductive health services without parental consent on the basis of their evolving capacities.

Ladies and gentlemen, it is evident that the potential use of the Bill for the purpose of sexual transitioning will be strengthened by the inclusion of Section 3(1)(a) that makes it explicitly clear that the primary purpose of this Bill is to ensure compliance with all international instruments to which Barbados is a party, some of which support and promote a cadre of perceived rights associated with the concept of sexual orientation and gender identity, including sexual transitioning.

We are not aware of any reservations that have been entered with respect to any of these inclusions or interpretations of international conventions. The natural effect of the inclusion of Section 3(1)(a) is that our laws will be interpreted in accordance to the changing fashion of international law as outlined in these conventions. Accordingly, we recommend that the purposes given at Sections 3(1)(b) to 3(1)(e) of the Child Protection Bill ought to be the sole purposes of the Bill.

We go yet deeper. Clause 3(2) of the Child Protection Bill lists the factors that must be considered in determining the best interest of the child. The ultimate

question then is: How will this Clause be interpreted in light of, one, conventions to which we subscribe and, two, the application of case law from jurisdictions which have embraced changes in their understanding of these concepts?

It should be noted that our local Family Law is heavily guided by Australian Family Law. The idea of the best interest of the child is heavily guided by Australian law. Australian law is highly persuasive before the Barbados Family Court. In the Australian decision of *WM vs The Department of Communities* in the Supreme Court of Western Australia; presented to you by Dr. Veronica Evelyn two weeks ago, the court determined that it was in the best interest of the child to remove the child from the protection of parents, who in the view of the court "emotionally abused the child by refusing to affirm the child's chosen gender identity and by refusing to accede to the child's wishes to transition to the opposite gender".

Beyond sexual transitioning, this Bill in its current form can be used to destroy families and can allow for the criminalisation of good fathers and mothers. We observe that the Bill also allows for a wide range of counselling services; for the mental, psychological and emotional health of the child and the family in Section 7(3), and others of the Bill.

It is interesting to note that at the start of Pride Month, the President of the United States issued a proclamation instructing federal agencies to combat the dangerous and discredited practice of conversion therapy. The president went on to say that additionally, his administration made it easier for LGBTIQI (Lesbian, Gay, Bi-Sexual, Transgender, Queer (or questioning and Intersex) youth to access vital mental health support and youth can speak to counsellors who have been specifically trained to support them.

Honourable Senators and Ministers, is it not ironic that in the United States, counsellors, who have been trained to indoctrinate youth into their insidious scourge of transgenderism are seen as providing vital mental health support but those persons trained to provide emotional support to youth who struggle with gender identity, are being faced with prosecution and are even accused of practising what is being deemed by the international community as conversion therapy?

How will counselling and treatment orders be impacted by the inclusion of Section 3(1)(a) of the Bill? Will the types of counselling afforded to our children and family unit change? Is this progression inconceivable in Barbados, as we amend our laws to follow international trends?

Gleaning in wisdom from this event and others like it throughout the Western World, we ask that it be stated in the Bill that nothing in this Bill shall be construed to promote or encourage rights related to sexual orientation or gender identity; transition therapy or the autonomous sexual rights of children of minor age.

In closing, we recognise that our world view is not

the only one that has to be considered but we are resolute in our conviction that our Constitution and our laws must reflect and protect the supremacy of God and that Barbados must remain a God fearing nation; irrespective of the diversity that exists among our population. To allow our laws to be infused with language that supports the evolving concept of gender fluidity, with its unscientific, unproven consequences, many of which are yet unknown, particularly as they relate to the physical and psychological development of our children, is to put our children, our society and our future at great peril. I thank you.

**Madam CHAIRMAN:** Thank you very much, Mrs. Maynard-Holligan. How this works, is that Members of the Committee would be able to examine with you, a number of aspects of the Bill. In the first instance, we will turn to the Chief Parliamentary Counsel (CPC) for initial responses. One of the things that I would be interested in having you do, is to identify specifically some of the concerns you raised which I recognised as being fairly general, as was the written submission.

I would hope that where you have expressed concerns about the gender fluidity and the other aspects that you would be able to point specifically to where you would position the concern in the Bill as it is currently constructed. That is for my benefit as Madam Chairman. At this point in time, I would wish to turn to Ms. Shawn Raine Belle for a response.

**Ms. SHAWN RAINE BELLE:** Good Morning, Madam Chairman and to all. Just to acknowledge that yes, Barbados would have been a signatory and party to the Convention on the Rights of the Child from 19 April, 1990 and ratified the Convention on 09 October, 1990. Through the ratification, States undertake to place their law of domestic measures and legislation compatible with their Treaty obligations. The context of your argument is to say that if we remove the said offending purpose of Section 3(1)(a) for instance in the Child Protection Bill and the corresponding Section 3 in the Child Justice Bill, Barbados would not be bound by those obligations. However, by virtue of the fact that we have signed onto it, we would still be bound by those measures. The only way then that we can really not be bound, is to put in a reservation in relation to certain obligations, which as a sovereign state we have the right to do.

Now, you would also know that within international law, there are certain restrictions in terms of what kind of reservations can be made in terms of if it goes directly to the substance of the Convention or something like that. The fact of the matter is, removing this provision would not then release the legislation from being bound by them. It is also to say that those international conventions, especially in relation to both the Child Protection Bill and the Child Justice Bill, they represent the standards as it relates to child protection specifically. The understanding of a child in need of care and protection and it needs to be stated, is set out in Clause five (5) of the Child Protection Bill.

It is important to note that this is not a Bill that sets out to speak to parenting. What this Bill is supposed to do, is to be invoked where a child needs care and protection. In Clause 5(1), you would see the articulation of where a child needs care and protection. I will just take the time to speak to it, so that Members of the public would also get an insight into what the substance of the Bill is to take care of. It is also reflected in the same Clause three (3) as well.

Clause five (5) states, "*(1) A child is in need of care and protection where the child*

- (a) does not have a parent;*
- (b) does not have a parent who is fit to exercise care or guardianship owing to*
  - (i) mental or bodily disease;*
  - (ii) infirmity or other incapacity; or*
  - (iii) any other circumstances,*

*providing for his up-bringing, and there is no available person or persons capable, fit or willing to undertake the care of such child;*

- (c) has suffered harm caused by*
  - (i) neglect of a child; or*
  - (ii) the failure of a parent to*
    - (A) supervise or protect the child;*
    - or*
    - (B) adequately supervise or protect the child;*
- (d) is a victim of abuse or exploitation, has been exposed to abuse or is likely to suffer abuse or exploitation;*
- (e) has been abandoned or deserted by his parent;*
- (f) has been exposed to danger, moral or otherwise;"*

Just to say, in terms of 'moral', that has been pointed out by other submissions and there was at one point a decision to actually remove it. That is just to be noted.

- (g) has suffered physical, emotional or psychological harm caused by being exposed to domestic violence by or towards a parent or other person residing with the child;*
- (h) suffers from a mental, emotional, physical or developmental condition that requires treatment to cure, prevent or ameliorate the effects of the condition or harm suffered and the parent*
  - (i) does not, or refuses to, obtain treatment; or*
  - (ii) is unable or unavailable to consent to services or treatment to*

*remedy or ameliorate the effects of the condition or harm suffered by the child;*

- (i) is in the custody of the Director or another person and the parent of the child refuses or is unable to resume custody of the child;*
- (j) is a child beyond the control of his parent;*
- (k) is a child who is a threat to himself or to others;*
- (l) is less than 12 years old and has committed acts which would ordinarily constitute an offence as listed in the Second Schedule or the Third Schedule to the Child Justice Act, 2023 (Act 2023-); or*
- (m) has been determined by the court to be in need of care and protection pursuant to section 40 of the Child Justice Act, 2023 (Act 2023-).*

It is also important to appreciate the place where you would invoke intervention for medical purposes. You have the definitions of care responsibility and delegated care responsibility. Care responsibility will deal with when the Authority has been vested with the custody of the child, where care and protection of the child has been declared. Care and responsibility would allow for the Authority, for instance, to consent to medical treatment not involving surgery for a child on the advice of a medical practitioner and consent to the medical treatment involving surgery; that a medical practitioner certifies in writing needs to be carried out as a matter of urgency and in the best interest of the child.

Now, you would have cited references to other cases, for instance, in Australia. There were other cases that were submitted by Dr. Evelyn as well. As I would have observed then, those cases would be persuasive but not binding. You also have to take into account, the way that legislation is interpreted. In the case where you are talking about surgery as a matter of urgency, it would take the ordinary dictionary meaning of the word and not an interpretation that you would impose upon it by an authority that only has persuasive standing within this jurisdiction.

It is urgent, as in, right away and immediate. Right. Even from examining the circumstances of the cases, you would recognise that there were medical examinations; psychological examinations and all sorts of different examinations in order to get to the conclusion of the medical doctors. The immediate case, even if you look at the very circumstances; the immediate problem in those circumstances was the threat of suicide in which case it can be argued that the real and proper treatment is to intervene to deal with suicidal ideation, and not sex change. Therefore, I put that to you and for you to understand that in that way, to me on a local level, that is how it would be interpreted.

Especially, within the context of this Bill and the meaning of "urgency", it would not match with the circumstances that you are trying to put forward that would

have been presented in the context of those cases. Again, I stress that they have persuasive weight but not binding weight. Those are my initial comments. Thank you very much for your attention.

**Madam CHAIRMAN:** Any other Members of the Committee before I ask Family Faith to respond? I recognise, Mr. Trevor Prescod.

**Mr. T. A. PRESCOD:** Good Morning to everyone. Conventions and Treaties, I assume, will have tremendous impact on local sovereignties. If it is said that we will sign on to all of the Conventions listed in the section that speaks to the purpose of the legislation dealing with the United Nations (UN) Convention on the Rights of the Child. If we did not submit our objections to any of the tenets within that Treaty at this specific time, are we in a position now to submit anything that we consider that we ought to have excluded at the specific time when we signed on to the Convention? I am a little concerned about that; whether there is provision...

If by oversight - I am just putting in that word - we did not object to any of the provisions then, do we have the right to now exclude ourselves from any specific tenet within the Convention? I got the impression that this faith-based organisation and charity is placing a lot of emphasis on sexual orientation. They are saying that there is a provision within the Treaty that allows that to be considered as still a legal instrument on sovereignties, equally as powerful as statutory law within the independent sovereignties. Can we exclude ourselves at this point, if it is agreed that we should?

**Ms. SHAWN RAINE BELLE:** Madam Chairman, through you, just to say that the time at which you put in a reservation would be at the time of signature; the ratification; acceptance; approval or accession. At the time, Barbados did not submit those particular reservations and it would be noted that at that time, there would have been no such interpretation in terms of how those things would have been understood. Barbados then would have to try to put in a reservation or you can, as suggested by the organisation; you would have a specific provision that would be speaking to this particular scenario.

I would take pains to indicate that the scenario that they are speaking about in terms of how it would be interpreted, could not lead to the interpretation that is being averred. You have to look at the language of what is set out in the Bill. At the end of the day, in terms of full ratification on the ground, the full ratification takes place with the domestic application. Yes, you would be under an obligation to carry out those measures on the ground but they are not fully operational until you do so.

**Madam CHAIRMAN:** Mr. Prescod.

**Mr. T. A. PRESCOD:** The other thing that I would like to ask is if the intended statutory provision now is approved at the highest office of land, Parliament; can the Convention have higher status in our sovereignty than statutory law? It cannot have higher status than constitutional law but does it have higher status than

statutory law?

**Ms. SHAWN RAINE BELLE:** In order to have full domestic application, there must be legislation on the ground. That is where it is. What can happen is that Treaties can act as extrinsic aids into interpretation of the legislation. It can act as an aid but it is not the end-all or be-all of how the legislation would be interpreted. That is how I would answer that.

**Madam CHAIRMAN:** Any other Member of the Committee? Okay. Hearing no further interventions at this time, I would refer back to Family Faith Freedom, Barbados and would hope that you could also lend some clarification to my earlier question regarding the specifics against the background of what I term "generalisations" of your earlier statement.

**Mrs. Davida MAYNARD-HOLLIGAN:** Thank you, Madam Chairman. I want to first give my answer which is quite different to that last question of whether Convention can have a higher status than local law. The Constitution is the supreme law of the land as is stated but in this Bill, we are stating that the primary purpose of the Bill is to comply with Treaty. The primary purpose. First and foremost.

**Madam CHAIRMAN:** Can I intervene?

**Mrs. Davida MAYNARD-HOLLIGAN:** Yes, please.

**Madam CHAIRMAN:** Are you referring to Section 3(1)? Section 3(1) says, "The purpose of this Act shall be ensure compliance with," and it has three bullets.

- To promote the welfare of a child
- To provide care and protection for a child
- Protect a child from abuse and neglect and ensure that the best interest of the child is given paramount consideration in all matters.

So I am conscious and interrupting only because I would want us to be clear and factual in our submission.

**Mrs. Davida MAYNARD-HOLLIGAN:** Yes, so we have here 'to ensure compliance' first not the best interest or welfare of the child but to ensure compliance with and I will just sum up Section 3 (1) (a) as international instruments and convention; then we do proceed to the welfare of the child. My understanding of that is in pursuit of ensuring that we have the best interest of the child or we promote the best interest of the child; we are first looking at international convention. That is given great weight based on this provision.

**Madam CHAIRMAN:** Mrs. Maynard-Holligan, would your submission then be, that it does not take premise in terms of where it occurs but that instead of bullet (a) it be bullet (e) because what you are speaking about is the order that it appears first but I think that Ms. Belle is best suited to respond to this but my limited knowledge of the law is that when you go through all the bullets and you have an 'and' whatever the order that they come in it is "and all of these things" taken together is the purpose of the Act. Ms. Belle.

**Ms. SHAWN RAINE BELLE:** Yes, Madam Chairman. The penultimate paragraph has the word 'and' which means that all of them are to be interpreted together. Additionally, the purpose of those particular conventions and instruments in context, the primary purpose is to serve the best interest of the child. It is indeed or in compliance with all the other cited objectives B, C, D and E. It is not running in conflict but actually they are in harmony. Thank you.

**Mrs. Davida MAYNARD-HOLLIGAN:** Okay. I hear you. I believe though that the conventions will be given great weight but not only will the conventions be given great weight; case law will also be given great weight and they are not simply persuasive. They are highly persuasive. That Australian case, Australian Law is highly persuasive in our court, especially dealing with matters of the best interest of the child. Given two (2) things, that case law in some of these jurisdictions are starting to construe these terms different from how we have known them.

For instance, the case where emotional abuse is seen as a parent disagreeing with a child's stance on gender; on his or her gender. Case law from jurisdictions which are highly persuasive are changing their understanding of these concepts. Convention as we have ratified it in 1992 and various years and what it meant then, is not necessarily what it means now. The word may not have changed but before where equality meant X; equality now means X minus two (2) plus 16.

The meanings of the words have changed and this is seen in the various reports and documents which are issued by these Treaty bodies. What am I saying? I am saying when we look at convention whereas I grew up thinking convention was beautiful. UN Convention - there is no law as wonderful as the Human Rights Declaration. I can no longer say I have that view because what it meant in 1992, where we all stood for freedoms and joint rights; we have swiftly been pulling away from that and I encourage you to go look at the reports being issued from Treaty bodies, if you are not already aware. I am not saying you are not but I encourage you to because you see in these reports statements and definitions of things that are very far from what we have come to know and understand and these Treaty reports are like journals.

You are not a doctor without being in tune with the medical journals. You are not a lawyer without knowing Case Law and being in tune with the journals. They inform your interpretation and they will come back here where we look at statute and we see emotional abuse; lovely word but what does it mean. Let us go to the Treaty. Let us go to the journal. Let us go to the report. Let us go to the Case Law. The interpretation given by places and jurisdictions and convention bodies that we look to and we respect these things are changing rapidly. They are not what they once meant. They no longer mean these things.

Madam Chairman, to go back to your question. I am indeed concerned about the inclusion in Section 3 (1). Excuse me, we are concerned. I do not speak for myself. I am going to

the Section of the International Instruments UN Convention, The Universal Declaration of Human Rights and all International instruments. I am concerned about the inclusion of that and furthermore, we suggest that we stated that nothing in this Bill shall be construed to promote or encourage rights related to sexual orientation or gender identity; transition therapy or the autonomous sexual rights of children of minor ages.

When a child becomes an adult, that is the child's decision but as a child we are to provide a safety net. We are to allow them to develop and really test who they are before they make critical decisions that can be irreversible. Some of these hormone therapies and surgery. Now I know that and CPC I understand your point and the court depends heavily on the decisions and case law of Australia and other jurisdictions.

Other jurisdictions are changing how they interpret these words. If our courts are going to be looking at these things, it will automatically mean that our courts will ask themselves; are we then to change how we interpret these words as are in this Bill and the Bill; there is no specific definition given of emotional abuse so that the court can say well this is how they interpret it but the specific definition given here, this is one of the areas for instance in Section three (3); nothing specific given to emotional abuse.

The definition of physical and financial abuse. These definitions are too wide. If the court can say well they are interpreting these things this way but on my Bill, I see a tight road; I must ensure that I am within my road; I am within my boundaries in my interpretation so it is clear that I cannot interpret outside of the definition. Our definitions are too wide so then the court can, according to the particular Justice, and his or her interpretation, bring to Barbados interpretations such as what has been seen in the case of *WM*. I just want to say a few more things because you spoke about a few things.

You said that in dealing with children, we are not necessarily dealing with parenting. There are two sides of the same coin. I do not think one can be eliminated; there are two sides of the same coin. Section five (5) of the Bill, again, it is not just Section two (2) definitions, it is also Section five (5). I am glad that you said that you were considering removing "moral" from there but let me go to Section five (5).

Section five (5) is heavily dependent upon Section two (2) so for instance, if I just say "mental, emotional, physical harm" then I must, of course, go back to Section two (2) so the original grievance of the definitions in Section two (2) being too wide comes back up here. When I go to Section five (5) to say, these are the grounds on which I can say that a child is in need of care and control, then there is a plethora of interpretations now that can be entered for what is "physical or emotional harm".

The word "harm" and the word "danger" have not been defined. Chief Parliamentary Counsel (CPC) I hear you that we would look at the dictionary but we will not

only look at the dictionary, we will also look to the same Case Law where these words are being given different meanings. We will also look to the same conventions and reports and so forth where these words are being interpreted differently than we have known them for decades to mean, so we are opening the floodgates here in Barbados unless we tighten up our definitions so that we say, this is what you may mean but this is what we mean. We need to be very clear.

**Madam CHAIRMAN:** So just to be clear. Your challenge is not with an absence of definition, which you have stated a few times; your challenge is with the definitions as expressed in Section two (2)?

**Mrs. Davida MAYNARD-HOLLIGAN:** The definitions that are expressed are too wide but then there are some words that have no definitions, for example, "harm"; a lovely word. What does it mean with respect to ...

**Madam CHAIRMAN:** Do you have suggestions for language that can be considered by the drafters in review?

**Mrs. Davida MAYNARD-HOLLIGAN:** The Committee; ourselves and others would be happy to submit something but at this time, I am not prepared to submit the definitions. Again, this is something that is done as a group. We would sit down, we would type our ideas of tighter definitions and where definitions are missing of definitions and we would be happy to submit those.

**Madam CHAIRMAN:** The thing is that you had requested the written submission followed by your oral presentation to make clarity and as we have been saying, we hope that where there is a challenge on something like definition, that you would propose ways in which to close the gap where you see definitions are too wide.

I would like to suggest further that the window open to you is very closed right now because once this presentation is concluded, based on the written submissions and the oral presentations, we start going through Clause by Clause where amendments have been proposed and what those amendments are. If the drafters consider that they have closed the gap, for instance, on definitions as much as they can and they do not have a position to balance that against, then you understand where the problem would be.

When coming to these sessions, I would just urge members of the public, where you have a challenge, state the challenge and also state the solution because that is the only way that we get the most constructive use out of the process.

I do recognise that we are up against the time so I will give you two (2) minutes to respond further and then I will ask the Chief Parliamentary Counsel (CPC) to come back in.

**Mr. HUTSON INNISS:** Thank you very much, Madam Chairman. I just want to point out within the two (2) minutes, that we have not taken issue with Sections 3(1)(b) to 3(1)(e). In fact, we said that we recommend that the purposes given at those Sections of the Bill ought to be

the sole purposes of the Bill.

Our primary contention here was with regard to the Treaties and the latitude that has been given by recognising in both Bills but specifically in the Child Protection Bill that the Treaty that the Bill conforms to all instruments that Barbados has signed on to. We have talked a lot about interpretation and that is very important because the interpretation that follows the enactment of the Bill will be something that we can be seriously affected by.

The Chief Parliamentary Counsel (CPC) had mentioned a couple of times the question of what is binding and what is not binding and that is crucial. When we signed on to the Universal Declaration of Human Rights that was back in the early 1990s. There was nothing in there about any sexual orientation or any of the other things that have been added subsequently. The problem with leaving that Clause which states that the propose of the Bill is to conform to all international instruments to which Barbados is a party, is that coming out of these instruments, there are interpretations which are not binding because they are interpretations. We have not necessarily signed on to them but become binding because there is great pressure exercised on us to include these things into our laws and herein lies the danger.

We made reference to the question of the interpretation of the Latin America Court of Human Rights where the original document that was signed did not have anything about same sex marriages or same sex unions and so on but because of the interpretation that has been given specifically by the Inter-American Court of Human Rights; pressure is now being put on us to enact in our coming legislation the provisions that they are saying must follow.

This has happened and is happening in a number of these international and United Nations (UN) Treaties so it is the subsequent reports that come out following meetings that create the danger because the pressure is being brought on us to change and amend our legislation to include the things that they want us to do.

Just briefly let me make this last point, if I may. Only this morning, I heard the end of a news report on Caribbean Broadcasting Corporation (CBC) radio. I did not hear the full thing but I captured a part of it where it said that our representatives to the United Nations (UN) have just ratified a number of documents and they ratified some and they noted others.

If you note something and do not ratify it means that you have some concern about that so you are just noting it. You are not at the point of ratifying it yet and this is where we see the danger because, yes, as you rightly said, Madam Chairman, we have the possibility of including reservations but when are reservations submitted?

The report that I heard, it spoke about noting certain things. I have not heard anything about reservations and I do not know if it is related to the Cotonou Agreement which is the subsequent agreement to the old LOME Convention. That was for 20 years, then that went into

another 20 years and now we have the Post-Cotonou Agreement which was supposed to be signed in July but was moved back to October. I do not know if it had anything to do with that but that document, which is a trade agreement; now has no less than 100 references to human rights and all kinds of things have been put into that which are going to be binding on us as we go forward. This is what we are bringing attention to.

**Madam CHAIRMAN:** Thank you and I interrupt because your last concern is actually one that was presented before, so maybe it would be useful for the CPC in the wrap-up response to clarify the point at which reservations are made. To speak to the difference between noting and ratifying; to also make some reference to the point that where reports that relate to instruments may say certain things, they do not have impact unless there are amendments made to the instrument. I happen to participate with one of the United Nations organisations that follow that specific issue.

There are reports that can come out of instruments but unless those are brought as formal amendments and adopted as an amended document, they are just reports that may be used for persuasive arguments and so on. CPC, I think that there are some broad areas that you may wish to comment on and some other specific concerns.

**Ms. SHAWN RAINE BELLE:** Madam Chairman, just to say that we emphasise the fact of agreements to which Barbados is a party; the right of Barbados as a sovereign state to enter its reservations. The reservations can be put in at the signature at that session, at that location. In terms of your raising the point about noting, that is what it means: It is noted but it is not that we have agreed to be bound and in order for the full application of a Treaty to be felt on the domestic level, there has to be reflection on the legislation under this domestic level.

In terms of the cases and being highly persuasive – note your language, “highly persuasive” but not binding – at the end of the day the courts have to weigh the legislative structure that you already have in your jurisdiction; the case law that may in fact touch and concern this area even if it is not direct and apply it with the language that is actually used and informing the dictionary meaning but there are also other cannons of statutory interpretation as well, such as the meaning of the words would be influenced by all the words around it and the context of the particular legislation. At the end of the day, it has a central focus of protection of the child.

I appreciate that you are saying that there may be a time or there is coming the influence of international pressures but at the end of the day, you have to appreciate where Barbados is. If it is that we have signed onto something, there are certain responsibilities that we would have to follow through on unless we sit down and put in the reservation. There are certain ways that things can be bound on the domestic level and you have to also note the conditionalities on the ground.

All the case law that would be here and all the



interpretation and statutory cannon. I have to make the case here that legislative drafting and statutory interpretation is not creative writing. There are rules and cannons and conventions that bind how you interpret legislation and it is for that reason that I would say that in terms of your immediate concerns about the surgeries and so on, the Bill does not in its wording give the opening for that interpretation. Thank you.

**Madam CHAIRMAN:** Thank you, and finally are there any other comments from any other member of the Committee?

**Mr. T. A. PRESCOD:** Madam Chairman, I just want to make this point. It is not legally technical but it is a fear which I have about Third World countries asserting themselves and protecting their people, especially when we are faced with the impositions of international law, Treaties and so on.

Based on conversations which you have had, I extrapolated that we very seldom express our reservations by noting these conventions and indicating clearly that the probability is that we might not even support provisions in the Conventions of the Treaties in law. Then at the local level, we want to pass legislation and there are some social facts that we do not want to include in the legislation but because of administrators' fear of coming into conflict with the imposition of the international law; a type of conflict in the law places us in a difficult position. My view is this is where we are at present. I cannot do it any better. I would like to give you a little synopsis but I cannot do it any better.

I believe that this must be overtly stated; that I got from these discussions that Barbadians and many important Non-Governmental Organisations (NGO) institutions have the fear that the impositions of sexual orientation would occur or would be allowed if the Bill goes through as it is.

There is also an understanding that conventional laws or Treaties – the Treaties that were signed – also give that latitude for us to interpret it and to imply in a sense in the international law that is likely to bind us. I think that is what is happening and I think it is matter that outside of the legality of the discussion; at some time, we have to deal with these sociological implications of the legislation itself. That has to be allowed or, to me, this Committee would actually be avoiding the reality that we seem to be facing.

**Madam CHAIRMAN:** All right, thank you and we are out of time and actually in breach because we have gone beyond and someone should have moved a motion for us to extend the time a little bit. Thank you to the Family-Faith-Freedom, Barbados for both your written submission and your oral presentation. We do think that we had a very useful exchange and as Mr. Prescod was saying even in his wrap-up, there are some aspects of the concerns raised that would certainly cause the Committee to reflect to see where clarity and greater comfort can be given within the context of the concerns raised. Thank you again and do have a beautiful day.

*Short break to allow representatives of Family-Faith-Freedom, Barbados to leave the Chamber. Enter representatives of the Democratic Labour Party (DLP).*

**Madam CHAIRMAN:** Welcome.

**Ms. Felicia DUJON:** Thank you. Good morning everyone. Thank you for having us. My name is Felicia Dujon. I am the Third Vice President of the Democratic Labour Party (DLP). This is my colleague, Ms. Tyra Trotman. She is also an attorney and also part of the Young Democrats. It is a pleasure being here. We want to appreciate and, of course, thank you for the opportunity to invite us to speak on such important legislation in Barbados not only for us as individuals within a society but also for the protection and safety of our children. We also reserve the right at any point for us to continue to submit when it is necessary because we believe it is our role and responsibility to submit to any factors that may affect us within our society.

Given the matter with the Child Protection Bill, we have been discussing this matter for the last few months. Since June, when we came across the Bill in Parliament; we thought there were some major concerns that should have been brought to the attention of not only the Government but also to the public domain. As we have submitted our written documentation, we want to briefly also go through the comments so that we have some idea of what is happening. For instance, the Bill in itself seeks to look at a one-size-fits-all policy meaning that it takes or may take into consideration that all families are the same.

As such, the Bill is structured in such a way that it seeks to penalise certain persons that may not fit into that category. We can understand in our Barbadian culture and society that there are diverse families with diverse concerns; economic concerns and in some cases, concerns that may affect them and how they conduct the business of a family structure and as being a parent. The financial distribution of family is very important. It seeks, as we said before, to penalise the poor and the most vulnerable families in our society. We have seen that.

The last few weeks we saw a mother and her children right across from here. She could not afford a home because of her economic downturn. These are real issues, so that when we create legislation it is not the abstract documentation but how does it affects the lives of every citizen within the society. As a result, we ought to ensure that whatever legislation is being passed that we take into consideration that every life matters and that every parent, child, family and household matters. We have to take that into consideration.

Our recommendation is that such policies require diverse research so that we can take into consideration every family within Barbados and how the economic and financial outcomes may affect their ways of distributing their parental responsibility.

Many times we speak of parental rights and responsibilities but at times not every family may be able

to afford and have those challenges. I believe the Minister did touch on that, even at times we and the institutions that are mandated to assist those families through welfare, may fall short and these families are left at the mercies of the State.

The second most important aspect that we have seen in the last few presentations is the language. We see quite a number of discussions on the language in terms of its ambiguity and of course the complexities of language that have been used.

Of course, we saw in terms of the "shall" and the "may" and how do we define the best interest of the child. As the DLP, we believe that any legislation that is being passed cannot be ambiguous. This means that it has to be clear for the average citizen. We cannot create laws and allow it to be ambiguous. If the law is ambiguous, the fault is at the administrators and the legislators, not the common man or woman. They ought to understand what the laws are.

The language used in the Child Protection Bill collectively needs to be clearer. It needs to be classified, particularly when it comes to the removal of a child from his or her home, particularly in extreme circumstances.

As I said before, I will use the backdrop of the mother with her two (2) children on that day when the children were removed from her. It was not her fault that she was placed in those circumstances but the children were removed. As I said, you see in the research that when you remove children from the parents, it is like a death sentence for them. We have to take that into consideration. The third aspect, as I said before in terms of the recommendations, because I believe that when we highlight a problem or a concern that we try to provide solutions to those problems. There must be some kind of provision in terms of how does the law help and assist those families and that we do not have that kind of ambiguous language like "necessary"; "neglect" and things of that nature.

I will briefly go through the fourth point and my colleague will come in as well. The fourth point which is on Page four (4); where the Child Protection Bill undermines parental rights and it seems to replace the authority of the parent to the authority of the Director which my colleague will highlight very shortly. Parental rights are very important. Why? A parent may have responsibilities which speaks in the Bill quite a lot with responsibilities. Just to break it down to common language, you have the responsibility to feed your children; to send them to school; to ensure that they do their homework.

It is also your right to know what you feed them; what kind of medical attention that they should get, as opposed to the State. When those kinds of rights are removed from the parent, it becomes a very dangerous precedent. We will discuss that a bit further. Parental rights and responsibilities, though they may intertwine with each other, there are separate entities legally. A parent's right cannot be overridden by the State and that is very

fundamental and important. I will give you again the same example with the mother with her two (2) children.

It was her right to try to keep those children safe and she brought them to homeless shelter but of course we understand the circumstances with that but the reality is that at the end of the day, the children were taken away from her. We read in the news report that the mother signed over her waiver, so that the children could be in the Child Protection Care. If you were in her state of mind and in the company of two policemen, chances are you will sign out of fear and everything else. We have to take that into consideration. The Child Care Board (CCB) is really social services and we have to remember that. We have to assist families; not criminalise them.

The very fourth point is that Child Protection Bill creates more foster homes and child care centres. If you are removing children from their homes because of all of these arbitrary conditions, you will see a high increase of children being placed in those kinds of areas and circumstances. We are seeing that. One (1) of the concerns that we have in those child care centres and foster homes, is that the new Child Protection Bill does not speak about pre-qualifications of those individuals.

We have understood how that has worked because the Child Justice Bill actually removed some of the kinds of harms that were being done to children in those centres, including flogging and corporal punishment of children by State agents. We have to be very careful and mindful of that. Overall, we are saying that the Bill is too wide and general in that sense. We have highlighted and could go through them. Definitions and interpretation is very important. From Page 11, we have seen, what do we mean by "care responsibility"?

The definition for parental rights must be inserted because we cannot have the child protection; the CCB or the Authority making decisions, particularly when the decision does not take into consideration matters of emergency. If your child is severely harmed and it needs medical emergency, the State has to step in but you need to counsel the parents. It is very important.

We will see in terms of a child in need of protection and care, again the standards that it gives in terms of mental issues; issues to deal with treatment; all of those factors have to be clearly defined.

As a philosopher myself, when we see that kind of language it can be interpreted. All this legislation at the end of the day, it points to the judge and the judge has to decide as to what exactly it is saying. Emotional harm will be again very problematic in terms of how we define that. Do we need various aspects of it? The neglect of a child which is very important because the neglect of a child in this current child care protection Bill what it actually does; it exonerates the State. It only penalises the parent and not the child. Given that we have in terms of the time; I will allow my colleague here to touch on the matter to do with the legal status of this Bill.

**Ms. Tyra TROTMAN:** Pleasant good morning once

again. I want to say thank you for giving the DLP the opportunity to make the presentation before you this morning. I am definitely honoured and humbled to be before all of you this morning. I will just touch on something that my comrade would have touched on which is the Section 22 (3). My issue from a legal standpoint of this particular section is that even though it says that the removal of a child shall only occur where it is necessary to protect a child from serious harm or danger. My issue with that word 'necessary' is a very discretionary word. What may be necessary to one person may not be necessary to another and we are dealing with a Director, yes, which is a statutory creature but at the end of the day, that person is still a human being; so depending on who the Director may be at the given point in time, you may have a situation where what was necessary to that person acting at the particular time may not be necessary to another and then you find inequality in how the law is applied.

My suggestion there would be to create a sub-section which creates different factors which are taken into account when determining what is necessary. Also that word 'risk'. That is a weird word to use in a piece of legislation because what is risky once again to one person or what is risky in one situation may not be risky in another so once again, I would say add a sub-section which clearly defines what factors need to be taken into account when determining what is risky.

I would say that the whole notion that the offences created by the Bill are tribal summarily is problematic. Not too long ago it was reported at a Criminal Law Justice Symposium which was held at the Hilton Resort, I believe it was in April of this year. It was reported that we have a backlog of 16,000 cases and that is only at the criminal level. That does not encompass the civil cases and the new cases which come in every day; sixteen thousand!

If you are creating offences which are tried summarily you are putting more pressure on that system and then my concern is I do not believe that the factors which contributed to that backlog have been adequately addressed as yet. For example, there are magistrates still writing long hand notes so there is no infrastructure which you would see at the High Court level.

The simple thing of creating microphones that then create a transcript instead of having them write notes which after every two sentences you have to pause. That obviously takes up time and then there is a small pool of magistrates. I think we need to widen the pool so you do not have a situation where because a magistrate is on leave, cases cannot be heard and right now I am getting dates in next year at the magisterial level; that just speaks to the difficulty we are having.

My suggestion, or the DLP suggestion, would be to create an independent tribunal. It is not a new concept and it has been done before. We see it with the Employment Law, The Labour Law. We have tribunals in place already and it has been a successful mechanism. I do not think we need to further burden the magistrate courts

especially in circumstances where what is causing the burden has not been addressed as yet.

I would also like to draw the Committee's attention to Section 7 (5) which states that this section, where the views of the child differ from the position of the Director; the child may within 13 days of the notification of the position, appeal to a judge's chambers. My issue with this particular position is not necessarily that the child has the right to appeal but I think that the parent should also be given that equal right to do so.

We support that children are given more rights. We definitely support that decision but there used to be a balancing exercise carried out. Although we want to give children more rights; we also do not want to take away those rights of the parents because that is a natural right, given by God and not man and therefore we do not want to be in a position ... we know have legislation which is taking away that God given right.

Additionally, I would just like to reiterate the point that my comrade made in terms of the language. I find the language of the Bill in of itself is seeking to replace ... I do not know if it was intentional ... but seeking to replace the rights of the parent with the authority of the Director and I think this is something that we need to approach very carefully because we do not want a situation; we have seen examples in other countries where this might have been a bit problematic.

My comrade highlighted a situation recently where children were taken away from a mother. We do not want that situation where even though we have parents who may be putting their best foot forward and really trying to do the best for their children. We are taking children away from them because they are falling short. I think there are a lot of social and economic factors which need to be looked into and addressed because this is a piece of legislation which operates in a country and I think we need to look at the circumstances of the country; social and economic factors and not just put a piece of legislation in place and not look at the activity that is happening right now.

A lot of people are struggling and a lot of persons especially in Barbados they are raised by single parents and a lot of the single parents they work two (2) and three (3) jobs just to make ends meet, so we do not want to put those parents who are truly trying to do the best for their children in a situation where we potentially have their children taken away from them.

We want to protect children from real neglect and abuse but I think there is a grey area which the parents who are really trying their best, given the circumstances, to make ends meet. I just wanted to keep the presentation quite brief so that is all I have to say at this point this morning.

**Madam CHAIRMAN:** And I assure you the Chair has already extended you some grace. Thank you for your submission. I would allow for Members of the Committee to raise any observations and commentary with you;

providing for CPC and I am sure that in her own presentation, she would be able to suggest to you that they are some aspects of the concerns you raised that have already been considered and taken on board so you will be pleased to hear that in the response from CPC.

**Ms. SHAWN RAINE BELLE:** Madam Chairman, through you, just to indicate that it must be made clear that the jurisdiction of the legislation is supposed to be speaking to children in need of care and protection. Care and protection is articulated in Clause five (5) of the Bill. We would have gone through it in a previous submission but let us look to them again to make sure that you understand that there would have to be these circumstances in order for there to be an intervention.

This is where the child does not have a parent; the child who does not have a parent who is fit for care or guardianship and it explores those circumstances; has suffered harm, neglect, failure of a parent to supervise adequately as supervised; victim of abuse or exploitation, abandonment, exposure to danger, moral and otherwise. It should be noted that the word "moral" will be deleted.

The suffering of physical, emotional and psychological harm, the suffering from mental, emotional and physical abuse and we go into an explanation. Where the parent refuses or is unable to reassume custody of the child; where the child is beyond the control of the parent and the child is a threat to himself or others where the child is under the age of 12 and has committed an offence ordinarily that would constitute an offence but cannot be held criminally responsible and the circumstances of care and protection, as it relates to Section 40 rather than Section 39 of the Child Justice Act.

Just to go into the areas that the Child Protection Bill goes into; basically setting out the importance of child participation and the paramountcy of the best interest principle; child participation as in Clause seven (7) and the best interest principles, child participation as in Clause seven (7) and the best interest principle 3(2) and Clause 9(3) that articulates the key procedures for the child care and protection process from reporting through to investigation and replacement and that is spoken to in Part III.

It recognises the need for care planning and offers some helpful guidance on the general approaches to be taken in this and other child protection procedures. It establishes the new and much needed Child Protection Orders to speak to protection and rehabilitation of children. It speaks to the interception of the conflict between children in conflict with the law and the need for care and protection. It speaks to the administration where it introduces some new actors. The Child Care Board then transitioning to become the Child Protection Authority; the introduction of the Child Protection Board and the Director of Child Protection and the staff of the Authority and speaking thereon in terms of the Director.

Madam Chairman, note that with Clause five (5), speaking to the jurisdiction then you would have to go to

Part III which speaks to the grounds on which you can make interventions. Clause 22 speaks to the grounds that the Director can make interventions. Where there is a request of assistance in relation to a child; where he sees a report that the child is in need of care and protection we would have been stipulated in Clause five (5) or it appears to the Director that a child is in need of care and protection.

Sub-Clause two (2) goes into what is determined as an appropriate response to a request for assistance or to report concerning a child. The Director shall have regard to the following:

- *the immediate safety and welfare of the child and any other child in the usual residential setting of that child*
- *the age and maturity of the child*
- *any disability of the child*
- *the existing circumstances of the family;*

That includes those economic issues that you would have been speaking to, the Director must take those things into account. I will draw your attention as well to the nature of the Director's powers in relation to investigation particularly, Clause 28(3):

*"An investigation by a Director may include the analysis of the following matters in relation to the child, medical health, social, residential, educational and economic as well as any other factors relating to the life of the child."*

I draw these things to your attention so that you appreciate that the Bill must be taken as a whole and not in parts and they work in tandem together. As such, it cannot be asserted that it does not take into account the economic factors but in fact sets out in the Bill specifically, that the Director needs to take those things into account and it also sets out the jurisdiction that when it is supposed to be invoked. This is not a Bill to deal with general care and protection of the child. This is a Bill dealing with where a child is in need of care and protection. Those things are already stipulated in Clause five (5).

**Ms. Tyra TROTMAN:** Good morning, just again in response to that. While we do appreciate that this Bill is to protect a niche of children, it is not just a wide provision on all children. I think we want to prevent a situation where there is an abuse of the law. I think that is what we are really concerned with and that usually happens where there is ambiguity in the law because myself, as a legal practitioner, we know that we can find loopholes where there is ambiguity and stretch those loopholes. Depending on how we argue, we can find situations where we abuse the law really; truly because there is no tightness to it.

You have to be very careful, especially in a situation like this where you are removing a child from a home. I think that language needs to be more tight and more clear. On the flip side, there is not a situation where you have legal

counsel that can then go and defend perpetrators and get away with it because the language is too general; too ambiguous; too loose.

You also mentioned consultation looking at the circumstances of the family and the circumstances of the child but I do not think there is mention of looking into the circumstances of the particular parent who may be under question or under examination. There is a provision that states, "the Director may consult with the parent before removing a child" but once again that language "may" is discretionary so it is not mandatory.

I think that parents, especially in circumstances like this; where you have such a draconian measure, parents are afforded that right of consultation; their right to be heard; to be listened to and even in situations defend themselves because as we know, we live in a society where there may be allegations or accusations which may not necessarily be true.

I have seen it time and time again where there are persons who may be aggrieved by the other parent, for example, the mother of a child may be aggrieved by the father of a child and she may make certain accusations which may not necessarily be true. Do we just then remove the child from the care of the father because an accusation like that was made or do we actually give the father the right to be heard by consulting with him first and making a thorough investigation before the Director then goes in and takes away that child.

I do not know if my comrade would like to add anything to that.

**Madam CHAIRMAN:** Before that, on the flip side of your argument. Suppose there was an instance where there was evidence because you have spoken about the situations where there was no evidence, but what about if there is evidence of whatever the accusation is. Is it still your view that that parent needs to be consulted?

**Ms. Tyra TROTMAN:** I think that where there is strong evidence, you would not want to create a situation where you are keeping the child in that environment. That needs to be made clear in the Legislation. I do not think that is quite clear.

**Madam CHAIRMAN:** I think that is what the use of "may" contemplates. As you are thinking, if you may wish to propose language that, in your view, can strengthen it because we went through this when we interviewed the Child Care Board and so on. We had some discussions and that is specifically what it contemplates; that in those situations where there is that clear evidence, you do not need to consult that parent.

**Ms. Tyra TROTMAN:** I think if I remove the word "may" and replace it with "shall" but then put a proviso which says basically, "The Director shall consult with parents ..." and then the proviso would be "... unless there is reasonable evidence ..." or "strong evidence ..." or "weighty evidence ..." which suggests or points in a direction where there is actually neglect and abuse.

I think the starting point should be the enforcement of the

right and then as we know, all rights are not absolute so you would then put the proviso which would then suggest that you do have a right to be heard but only if it is that there no evidence pointing towards neglect or abuse.

**Madam CHAIRMAN:** Chief Parliamentary Counsel (CPC).

**Ms. SHAWN RAINE BELLE:** Just to indicate that when it speaks to the principles to be plied in the Administration of the Act, Clause 4(f):

*"Where a child is removed the home of his parent under this Act, whether temporarily or permanently, he shall be entitled to a safe, nurturing, unsecure environment and the child may retain relationships with people significant to the child including his parents, relatives, peers, family friends and community unless it is contrary to his best interest."*

That understanding of 'best interest' would then be referred back to Clause 3(2), that speaks to determining what is the best interest of the child and the following matters would take into account:

- (a) *the safety of the child;*
- (b) *the capacity of the parent to properly discharge his parental responsibility;*
- (c) *the physical, mental and emotional or psychological needs and the development of the child;*
- (d) *the appropriate care or treatment required to meet the needs of the development of the child;*
- (e) *where appropriate, the views of the child;*
- (f) *a secure place for the child;*
- (g) *the positive development of the child as a part of and a member of the family;*
- (h) *the love affection and ties between the child and other persons in the life of the child;*
- (i) *the capacity of persons, other than a parent, to exercise custody rights and duties in relation to the child; and*
- (j) *the continuity of the care for the child and the possible effect of disruption of that care on the child.*

**Ms. SHAWN RAINE BELLE:** In addition, the Bill at Clause 31 also speaks to the power of the Director to remove a child in very restrictive circumstances and those circumstances are very clearly articulated: Where the Director has reasonable grounds to believe that health and safety of the child is in immediate and/or imminent jeopardy and there is not enough time to apply to the court for an order under Section 32. The Director may, if necessary and with the assistance of a police officer and the need of further authority, enter any place where the child is believed to reside or be present and may search for, locate

and take the child into custody. There is the restriction there that is purposely put in, to make sure that the Director then goes to the court to get the order that is specifically meant for the particular circumstances in Clause 32.

Your attention is also drawn to Clause 34 which speaks to the Emergency Protection Order. The Court shall make an emergency protection order where it is satisfied on the basis of an *ex parte* application by the Director, that the child is suffering or is likely to suffer physical, emotional, mental or psychological harm and is in need of care and protection. Inquiries as to whether the child is suffering or is likely to suffer from critical emotional, mental or psychological harm; being frustrated by access to the child; being unreasonably refused and the applicant has reason to believe that the access to the child is required as a matter of urgency.

There are clear circumstances in such cases to deal with the emergency protection order and dealing with custody. Clause 37 which speaks to the Care Order: The Care Order shall be made for the purpose of removing the child who is in need of care and protection as defined in Clause five (5) and placing the child in the care of the Director. That is the place where the care is placed – in the Director – in the context of the court order. Those are clear and the Court may make a care order where it is satisfied that the child is in need of care and protection.

We can go on then to Clause 42, which is a custody care order: Where the Director assesses that there is not a realistic possibility of restoring the child to the custody of the parent pursuant to the provisions of the Act, it is in the best interest of the child that he no longer lives with the parent and if the restrictive option is not available, the child shall make an application to the court for a custody order. It would not be accurate to say that there are no clear parameters that speak to when the child can be removed from his environment. Thank you.

**Madam CHAIRMAN:** So your response, CPC, is that pieces taken together address the concern that was made specific to the use of the proviso and so on.

**Miss Felicia DUJON:** If I may, thank you. There are a few matters that I have been following in terms of the discussion and in terms of the compliance issue. I believe that most of the concerns that we have is the removal or the avoidance of parental rights. The last Bill that we had, from centuries ago, called the Prevention of Cruelty to Children, did speak of parental rights.

This current Bill actually violates parental rights because there are other Treaties that we have signed onto that deal with parental rights but only address children's rights. We are discussing in terms of the Convention on Human Rights; Convention of Children's Rights, also in terms of international conventions on economic and social and cultural rights. All of those Treaties, Barbados did not sign onto that cover parental rights. The other aspect that we want to look at is that what I am seeing is that we keep going back into a regressive cycle.

I just want to go back in terms of a child's need of

care and protection; the requirement that you are giving parents – I am talking about the average Barbadian parent – the outline here stipulates this is what a child requires; a child in need of care and protection and it outlines. This means that if any parent violates any of those terms; the State or the Government or the agencies have the right to intervene and this is where the problem comes in first and foremost and we are not looking at this Bill in isolation.

Even when the Director does all of what is required in terms of the procedures and the steps; the Bill tells you that these are the requirements and it clearly states that and shows that if at any point these conditions are violated, the State has the right to come in.

It is not only in terms of bodily harm and physical harm and emotional harm but all of the requirements at any point, the State can come in. The other aspect that I wanted to look at is on Page 16, section two (2) that deals with the best interest of the child. We are going to come back to that conversation because there is this presumption that the State is the one who determines what is in the best interest of the child.

Historically, it has not; biologically it has not either because every single parent – we are talking about rational, sensible, good, loving, God-fearing parents – the reality is that in this Bill, it presumes that the State is who determines what is in the best interest of the child and to remove parental rights from this aspect.

As I said before, we cannot speak about children's rights if we do not have parental rights to guide this legislation because at the end of the day, parents are the only ones who would really protect children; even against the State and we have seen situations like that. We have seen situations where the State decides that it wants to mandate vaccinations for children. We have had cases where the State decides that it will have different types of surveys without the consent of parents. The reality is that we have to have a very clear definition of what parental rights are, so that the State does not infringe or over-ride on those parental rights. When you create laws and legislation, we have to ensure that it is just and does not deprive anyone of their own fundamental rights.

All of us in here would believe that we need to protect children even against themselves; even against us but at the same time we cannot remove parents from the conversation. Section two (2) here, where it speaks about determining what is the best interest of the child, it is not the State.

The State cannot outline all of these provisions; it cannot say that because the safety of a child for that mother, she felt the safety for her being homeless was to bring them at the homeless shelter because she felt that was in the best interest of her children. We have to take that into consideration. As I said before, when we are dealing with legislation, this is abstract but the reality is out there when we leave this room: How do parents recognise and how do they deal with this Bill and the reality is how will it affect them. We need to deal with the problems now. Whatever



anomalies that are there; whatever ambiguities that are there; let us try to address them before it goes into the public domain to avoid parents and children being placed in circumstances that technically they may be unable to deal with in the long run. Thank you.

**Miss Tyra TROTMAN:** If I may just add before there is a response. Also, we have lots of sections which deal with the protection of children from the parent but what about the protection of children from the State? We had a situation not too long ago where there were allegations about the Government Industrial School (GIS). What happens in those types of situations where the child is removed from a potentially dangerous situation but is put into an even more dangerous situation? Where are the sections in the legislation which deal with that? Also, I heard mention of various orders – orders, orders, orders – but being a legal practitioner myself, we know that sometimes orders are not something you get overnight.

Is it that the application will be dealt with as an urgent application which has 72 hours or so to be produced? Or, will it go through the ordinary court system? If it goes through the ordinary court system, we might have a situation where the case is pending for months. What happens then? What happens where the child is removed wrongfully based on wrong accusations and then there is an appeal made but the appeal takes months, sometimes even years to be heard and to be finalised? What happens then? Or, on the flip side, there is abuse and you have to get an order and the situation takes months to be heard, so you have a child which is in that dangerous situation but then, because of the court system we have here in Barbados; I mean it is no secret, we really have a backlog of cases. What happens in those circumstances?

**Ms. Felicia DUJON:** I would just like to add with my colleague that the way the Bill is written; the State actually exonerates itself when it speaks about cruelty to children. If cruelty to children is done in the State's care, the person is charged \$10,000 and two (2) years but if a parent commits the same offence, it is \$100,000 and five (5) years. These kinds of anomalies are also in the Child Justice Bill, which we will touch on as well. When you look at the Bill in terms of the penalties, the State almost wants to remove itself from responsibility because we do recognise that neglect. The State defines neglect in terms of the parent neglecting children and not the State because the State should be held responsible as well if they neglect the children, if they are in its care. The penalty is different. If cruelty is done to children in the State's care, the penalty, there is an inequality in terms of how it is distributed.

It seems to penalise the parent more for the same harm that is being to children. We have to recognise that as well. In most of those cases as I said before, we are here, the Democratic Labour Party is here, to provide the assistance that is needed so that we can provide an aid.

Even in abuse, we recognise that we prologue that we have child labour but child trafficking is also a very

serious concern. We have had one case of child trafficking in Barbados but have not had much reporting being done on it. I think the United Nations or the United States Human Rights Report for 2022 speaks about human trafficking and child trafficking. These are the kinds of concerns that we have to look at.

We also want to look at criminal neglect. I would say in some cases, criminal enhance, where gang initiation is also now being seen as child abuse; where parents or persons within the community get children to be indoctrinated, I would use, or initiated into gang activity. All of that we have to take into consideration because we can understand the new climate of things that we live in.

There are quite a number of new evolving concerns; the language of child protection and what evolves and we have to prepare ourselves because this legislation may not be for our generation alone. Most of us here have passed 50 years and so it means that this legislation may last centuries, so we have to prepare ourselves as we have seen that science is moving faster than law. We have to ensure that all of those provisions are made. Thank you.

**Madam CHAIRMAN:** Ms. Belle

**Ms. SHAWN RAINE BELLE:** Madam Chairman, just on the point of orders. Now, in terms of the orders, Clause 34 makes provision for an emergency protection order which would be done *ex parte* by application by the Director. We would have gone through the various circumstances and procedures in relation to the orders.

In terms of the application of offences, you would note the language actually does say, under unsupervised or unattended child, Clause 60(1) "*Any person having the care, custody or control of a child*". In cruelty, there is a differentiation appearing where, "*A parent or any person*", but the term "any person" is used. When you look at the way that the penalty provision is in, then you would speak to summary conviction on the fine of \$100,000 or to imprisonment for a term of 10 years or to both; having regard to the Interpretation Act, which speaks to the fact that express our statutory penalties in the maximum that is from **one (1) to 100 and 1000 to one (1) to ten or to both**. The point is that "person" also captures the abuses that could be put in relation to the State.

Additionally, even if there was asserted a defence of doing things in the best interest or the course of their duties; it would have to be proven that their specific action was justified in the carrying out of their duties which you could not say that these activities were.

There are a number of different things that would have been said and it is important to note the invocation of the jurisdiction as articulated in Clause five (5). It is not dealing with parenting in a general sense but where there is an issue, in relation to whether the child is in need of care and protection, that is when the jurisdiction is invoked. You cannot also divorce it from the investigation and intervention powers as articulated in Part III, in which it was stated that the economic circumstances of the family

can be brought to bear when the Director makes certain decisions.

I am not sure about the two (2) years or both or the five (5) years because when you are looking at the legislation here and I do not know if it is a version that you have but the stated penalty at Clause 60 for instance, is liable of summary conviction to a fine of \$25,000 or to imprisonment for a term of five (5) years or to both. In cruelty to children, it is a fine \$100,000 or to imprisonment for a term of 10 years or to both. The only time that that two (2) years comes up is in terms of impersonation of a member of the Board or the staff in relation to the Authority. I am just pointing that out.

Again, we stress the fact that we are speaking about a person. In terms of the articulation of parental rights; this would have been spoken to in Clause 2 in relation to parental responsibility which means the rights, duties, powers and responsibilities and obligations that by law, a parent has, in relation to a child. Law meaning the enactments that are set out and passed by the Parliament and subsidiary legislation and law relating to case law coming out of the courts and does not include the right to consent or withhold consent to the making of an order and the Adoption Act. That is a different category but it does speak to the articulation of how parental responsibility is to be understood.

I, again, have to stress the invocation of the jurisdiction. The fact that it is supposed to be directed at care and protection of children in need of that care and protection and not as a general thesis on how one raises one's child. It is not the substance or the focus of this Bill. It is to deal with the care and the child in need of care and protection. There are prescribed principles that are to be applied in the administration of the Act and you would see them at four (4); to which all of the people involve, including the courts, would be bound to. I just wanted to just articulate those things and I will end here Madam Chairman.

**Madam CHAIRMAN:** Any Member of the Committee wishes to offer a comment or ask a question? If I hear none; is there anything further from Ms. Trotman or Ms. Dujon?

**Ms. Tyra TROTMAN:** I have one final point. I do not want to keep you back for the entire morning. I appreciate the stress on the word "jurisdiction" but you said "supposed to be". We know a lot of times that things which are "supposed to be", are not necessarily done. Even though the jurisdiction is "supposed to be" for those children in need of care and protection because the language which is what is actually there, it states: "An Act to make provision for the reform of the law on the care and protection of children".

It is very general. It is very wide. I think that this piece of legislation can be used and abused if it is that the language is not rectified. If it is that the jurisdiction is "supposed to be" limited to those circumstances where children really are in need of care and protection; the language of the Bill needs to make that expressly clear. I

do not think that we want to risk a situation where it is left open for interpretation. It is something that can be fixed very easily. Just by inserting a few words; I think that that mischief can be cured.

**Madam CHAIRMAN:** Anything further, Ms. Belle?

**Ms. SHAWN RAINE BELLE:** Madam Chairman, the submission is noted and if it would provide for greater clarity, I have no problem in the insertion. It must be noted that you have to take the law or the entire statute in context. The context that the Bill speaks to is actually quite clear. If to my mind, if it makes it more understandable; the intervention can be made.

Thank you.

**Madam CHAIRMAN:** As "Bajans" would say, "pellucidly clear" rather than pellucid. Okay. Given everything that we have heard this morning, we want to say thank you for the intervention. I think we have benefited from the discussion. I also think that it is necessary for me to highlight the fact that once the Bill is proclaimed, I am sure that you are familiar with that, there are a number of Regulations that will follow. The Regulations make very expressed and explicit how things are to be done in ways that you would not burden the law and make it extensively long and more difficult to read for a layman like I.

The Regulations make it clear how things will be rolled out. Also, what will be done, is that there has to be an extensive process of public consultations but sensitisation because you would recognise that for an attorney; you may be able to read into it and recognise certain aspects that you may or may not abuse. For everyone involved, those who are the users of it whether in institutions such as the CCB; parents and the general society, the Bill has to go through that period where we are sensitised on it. I am sure during that process as well, there would be further clarification of a number of things. It would be useful.

Again, we thank you. We have come to the end of this particular session. I would encourage Members of the Committee to get up and stretch their legs for two (2) minutes before we bring into the Senate Chamber the final set of parties for the day. Again, thank you ladies. Do enjoy.

*Short break to facilitate the exit of representatives of the Democratic Labour Party from the Chamber and the admission of the members of the Barbados Bar Association*

**Madam CHAIRMAN:** The Committee is back in session as we welcome representatives from the Bar Association with us again today. Glad to have you. We have received your written submission. I will not knock you for the timeliness of it but we received it and we are grateful for your cooperation. What I would allow for you to do, seeing now that you have two bites at the cherry. If I were following strictly then I should tell you that you have 32 seconds left from last time but your 15 minutes begins again so we look forward to your summary presentation this morning. Thank you.



**Mrs. Kaye WILLIAMS:** And thank you again Madam Chairman and to the Joint Select Committee. We are indeed very pleased that we have this opportunity. We do not take it lightly. Our submissions today will be in respect of the Child Protection Bill; with respect to the Child Justice Bill. The Family Law practitioners are in consultation with the criminal law practitioners; as you could appreciate the interconnectedness between the two so we respectfully ask for a bit more time with respect to the Child Justice Bill. There are actually quite a number of complex issues that we wanted to sort through; so we will be presenting today on Child Protection Act. Again today we have the eminent attorneys, Ms. Margot Greene KC and Mrs. Peta-Gaye Lee Brace, leading family law practitioners. Thank you.

**Ms. Margot GREENE:** Thank you. Good afternoon everyone. This presentation will be based primarily on the Child Protection Bill. I trust that all of you have the written submission which we would have sent off so I am just going to go through briefly. Your Chairman might be pleased to know that we can complete this within as many seconds as she wishes and we can certainly do it in the 15 minutes that is allocated to us. I will start on Page two (2) with the definition of child. I have noticed in the Bill that the definition says simply someone under the age of 18 years. Our concern about that is that you can get married at age 16 with your parents' consent and if the parents' consent is unreasonably withheld you can go to court and have that dispensed with; so it is quite possible for you to be under the age of 18 and be a married person so in those circumstances, I think the definition would have to be amended to say something like those ... well the draftsman would know what to say. Persons under the age of 18, who are unmarried or something like that but we are not draftsmen. They will know exactly what to say. This is just to point out to them that the definition should refer to those who are under 18 but who can engage in adult activities. I am sure most of you would know as well that you can consent to sexual intercourse at age 16 and I think under the Factories Act within certain periods of time, you can work. You can be gainfully employed. You just have to be outside of school hours and before darkness or something like that so they are lots of adult activities that a child can do.

Emotional Abuse. We noticed that this spoke about psychological pain or injury. I am not quite sure what is psychological pain. I do not know if it can be defined or I do not know if that should be included at all but that is for your consideration but I thought I would draw it to your attention. I do not know what psychological pain is. We went through financial abuse except that, the way the financial abuse is defined seems to me to refer to acts by third parties, in relation to the child as opposed to an act that is perpetrated against the child directly, such as, interfering with money to which the child may be entitled or assets to which the child may be entitled or coercing the child to do something with his or her assets which might be held in trust for that child. I felt that the definition could be

broadened.

The word guardian, I would as I have said here I think that it should include a person who has care and control of a child and not limit the definition to someone who assumes or has the legal responsibility and authority to make decisions. It is quite possible for you to have that responsibility without having the child in your physical care as happens when divorced parties. Custody is joint which means that both parties have a right to have a say in what happens to the child but usually the child lives with only one person; that person has care and control of the child.

We felt that the person should be brought into the net as well rather than simply someone who has legal responsibility, who can simply be a guardian or a grandparent or an aunt or even just perhaps somebody appointed testamentary guardian -- somebody appointed through a will; and feel free to ask me any questions as I go along.

Parent. We felt that the definition should reflect today's reality such as where you have surrogacy. People who might give birth, who have no biological connection to the child, so it was felt that since I believe this legislation is meant to last for several years, that you should extend the definition to include a child that is born in those circumstances.

Physical abuse. I was not sure what kind of omission can be regarded as physical abuse. I would have thought that physical abuse meant actually perpetrating an act against the child but may be you have a different idea of what physical abuse is so we did query the word omission being included there.

Verbal abuse. It was said here that verbal abuse, in the same basis, to include behaviour communicated by silence. I am not so sure. I felt that verbal abuse should include words only. Maybe you will have to have a different category for behaviour which is abusive and which is conducted through silence. I do not think it should come within the purview of verbal abuse. I think it should be included. Silent treatment can be awful and it is a form of abuse but I do not think it should be included under verbal abuse; it should come on its own. I get what they were trying to get at.

Now Section three (3), in relation to the views of the child to be sought. It be useful to have an age limit imposed here since the definition of child says anyone under the age of 18 and I expect that there will be regulations to go with this Bill when it becomes an Act so that that can set out how you will get these views of this child.

It is felt that adults; persons who are not trained in how to deal with children might not necessarily know how to get their views because you are authority figures they might say to you what they think you want to hear so you might not necessarily be getting an accurate reflection of their views. It was felt that you should either have some age limits and if not in the actually Bill; in the in

Regulations you should set out how you would arrive at finding out what the child feels about the particular situation and we have felt that it was best to go through the experts and psychologists or psychiatrists, depending on the circumstances. It is the same thing where you are seeking the views as set out at Section four (4) of page 17.

Section Four (4): This business of where a child is temporarily or permanently deprived of its family environment; that it shall be entitled to special protection and assistance from the Government of Barbados. I did not think that this should be included. We felt that all children in Barbados are entitled to special protection and assistance from the Government of Barbados. This could be viewed as being discriminatory so that should either be looked at again or phrased in a different way. I think I understand what you are trying to get at which is that you want children who are placed in vulnerable situations to be taken care of by the Government but perhaps it should be expressed in a different way.

Section Five (5): the inclusion of the word "moral danger", I think, is ambiguous. I am not quite sure what is "moral danger". Perhaps the Priest who is here with us can explain in more detail but I am not quite sure what is moral danger. I do not know if it would be like watching pornographic movies or something like that? Is it of that nature? Well, perhaps you can refine it in the Regulations. Yes, as my colleagues are pointing out, moral can also be subjective.

**Madam CHAIRMAN:** You will not gain extra time for engaging Senator Rogers.

*Asides.*

**Ms. Margot GREENE:** What is moral for a Jehovah's Witness might not be the same immorality for an Anglican or a Muslim. We are now having a multicultural or a multi-faceted society so we need to look at that with a little bit more detail.

Section Five (5): Where it was felt that based on the way this is phrased at present, the victim of domestic violence; it seems as though that person is liable to be punished as well by perhaps taking the child out of his or her care. Let us assume that the father has gotten beaten up and an application has been made for the child to be removed from the home. If that father is a loving father, then he is punished as well as the child is punished by being separated, so perhaps we need to look at that again and refine that Section.

Section Five (5): This seems to give the child the ability to initiate action on his or her own without the assistance of a parent or guardian. I do not know if that is intentional. I think it should be allowed. I welcome that Section in the Bill but I was not quite sure if this is what was required, perhaps you need to make it clearer.

Section Seven (7): I have mentioned that already about an age limit and how you would find out what the child's views are. Section Seven (7): "The child being

entitled to legal representation" ... this happens at present. I think it should be made clear in the Regulations, that if a child is going to be represented on its own, then provisions should be made for the payment of the attorney-at-law; so that it does not come from someone who will control the attorney-at-law who is taking the instructions.

Section Eight (8): "... which establishes the Authority" ... I was wondering if the Authority will also be regarded as the essential Authority for The Hague Convention? We might not think it but Barbados has quite a few cases involving children who are abducted and taken away and for most Barbadian litigants, this is exceedingly expensive to pursue the ...

*Asides.*

**Ms. Margot GREENE:** That being the case, it would be appropriate for you to make it clear because although Barbados has acceded to The Hague Convention; we have not put in place the Domestic Regulations and it really leads to trouble. Barbados is also an attractive destination for persons who wish to take off with children, in ways that are not legal. You would not think so, but that is true.

**Mandatory Reporting:** I think we started to deal with this on the last occasion. The doctors are having a concern with this because they feel that having to report in a mandatory fashion could lead to a breach of their doctor-patient confidentiality. You have put in a caveat for the attorneys-at-law; you may consider doing the same thing for doctors. Doctors also felt that if you do not do this, you could send children underground to seek medical attention from unsavoury practitioners or those who are not licensed to practise at all, in order to escape having their information being made widespread or being told to the authorities and getting the State involved.

**Catholic Priest:** I cannot speak to Catholic Priest and the sanctity of the Confessional Seal; Mrs. Lee-Brace can do so, so perhaps you may wish to tell them what is the Confessional Seal for Catholics.

**Mrs. Peta-Gaye LEE-BRACE:** The Confessional Seal is the sacrament of reconciliation; it is a sacrament under the Roman Catholic right and the Priest there and is bound by vows of confidentiality. In the same way that lawyers are protected, the Confessional Seal should also be respected. This does not mean that if a Priest has knowledge of some impropriety, that is captured under this Section, outside the Confessional Seal that he is not mandated to report it, but the exclusion here that we are proposing just captures the very strict Confessional Seal.

What other countries have done is that, the way that it is approached is that what is said in the Confessional Seal; if something is flagged, try to get the person to repeat that outside the Confessional Seal and then the Priest will be mandated to report it but you are going to have a challenge if the Confessional Seal is exposed under this Section. As a Catholic, I am asking that that be considered.

**Ms. Margot GREENE:** Section 28 is pretty

straightforward. Given the wide powers of the Director; it is a welcome requirement that when a Director removes the child under this Section, he or she is required to apply to the Court for an order within 24 hours. That does not happen now and it has led to some unhappy consequences and this is definitely a recommended addition to the Bill.

Section 32: I was confused with the notion of a Custody Care Order. A Custody Order is different from a Care Order. I do not know if this is specifically defined. Custody means the bundle of rights relating to the care of a child, whereas the physical care is separate and distinct. I felt that you should make a distinction between a Custody Order and a Care Order. These are completely differently things within the context of family law; perhaps you should give that some thought. I do not think the two (2) should be conflated.

Section 34: the query here is what is psychological harm and how is it proved and who is the applicant as referred to in Section 34(2)(b) and how is that person able to determine that a child has suffered psychological harm if he or she is not a psychologist or if he or she has not taken the child to a psychologist. We also welcome the fact that an order of this type has a limited duration, even after it has been made -- 14 days.

Section 36: about the social inquiry report is pretty straightforward. This is a codification of what happens at present. Usually no orders are made in the Family Law Court. Certainly where there is a custody dispute without a social inquiry report being done. It is usually done by the Welfare Department. I do not know if that is contemplated here but I think they do very competent reports.

Section 38: The courts shall not make a final decision for the removal of the child from the care and protection of its parents or allocation of parental responsibility with respect of a child unless it has considered a care plan. This again is a laudable endeavour but it should be noted that the only person responsible for preparing such a plan is the Director. It would be useful to have an input from other persons, including a psychologist, psychiatrist or even from the parents, since they would be the ones with the physical care of the child. I think they should be involved in preparing the care plan. It should not be left to the Director alone who would just be a State Authority.

Section 42: custody and care are two separate concepts and that should be taken into consideration when you are using the phrase in the Bill. Am I at the end? Am I allowed to ask questions because I have some queries.

I want to know what was the jurisdiction of the Bill. Does it extend to all children who are in Barbados or only to Barbadian citizens or only to children of Barbadian citizens? Does it apply, say, to children who are here temporarily, either because their parents may be on a work permit or does it apply to children who are here as tourists? Who does it apply to? How does this Bill affect the common law remedy of making a child a ward of the court? Normally, where it is felt that a child is in danger, an application is usually made to the court to make the child a

ward of the court so that the court makes decisions about that child's wellbeing. It is interesting to note that the order is made from the time you file the application. You do not even have to wait until you get to court. It basically means that there is a presumption that the court will take care of the child and whoever opposes the order, would have to prove that it should be removed rather than the other way around.

The practical importance of the wardship has been curtailed by the existence of statutory custody jurisdictions such as the Family Law Act; the Minors Act and the Maintenance Act and such other types of legislation but it still exists and is still in use so I wonder what was the effect of this legislation on that common law remedy. The other queries I had as well occurred to me afterwards and they include the use of corporal punishment.

I noticed that in this Bill, you have only made reference to it in relation to child care centres and those child care centres are defined and they do not include schools; our homes, so it seems as though we have not tackled that question of corporal punishment in this Bill. If we really are to protect children, I think we should deal with the issue of corporal punishment. Unless you wish to consider that corporal punishment will fall within physical abuse. Those are my comments, Madam Chairman.

**Madam CHAIRMAN:** Thank you for your comments and over to Ms. Belle for her initial responses.

**Ms. SHAWN RAINE BELLE:** Good afternoon, Madam Chairman. Good afternoon to all. Good afternoon, members of the Bar Association making your presentation. Just to speak to the jurisdiction. Section Nine (9) of the Interpretation Act states that every enactment shall, unless the contrary intention appears, apply to the whole of Barbados. The thing is that we do not do legislation to have extra-territorial application unless it is explicitly stated and you do not usually do that unless there are very specific circumstances, so for instance with shipping or where you are extending the jurisdiction of Barbados to a particular place for diplomatic reasons, or with ships that would be considered in Barbados, but we do not tend to do extra-territorial so it is confined within Barbados.

In terms of the definition of child, as would have been observed in the previous presentations; you would have noted that the United Nations Convention on the Rights of the Child was an underpinning of the drafting of the legislation. By virtue of the definition of child coming out of the Convention, the definition was redefined to suit. You would have noticed too that in the context of the Child Justice Bill, there would have been a Sixth Schedule that would have dealt with consequential amendments to various pieces of legislation, especially within the criminal context, where you are speaking to this particular peculiarity that we have in Barbados where we talk about "young person" and "child". All of that would have been refined in that Sixth Schedule.

In this context now, in relation to child protection, this has to do with a specific sphere. The fact is that when you are

dealing with reading of the legislation, everything has to be read *in pari materia*, meaning that everything has to be read together and constructed together, so it is not a situation where you would not take into account every other existing law, in relation to how the child protection legislation should be interpreted. If it is that you bring forward a particular accusation or a particular set of circumstances and then the terms of the Marriage Act would be brought up, then the fact of the matter is then that would have to be taken into account in the interpretation of how the child protection law would be spoken to.

In relation to the definition of psychological pain as not being defined. In terms of the canons of statutory interpretation, you will note that one of them is that where the Act may not provide for specific definitions, the court is allowed to rely on the ordinary dictionary meaning. Other canons would be that the use of the word would be taken into account in its context. Here, you would speak to the looking at psychological pain and you would refer to the ordinary dictionary meaning as well as what would be contemplated by what is supposed to be protected under the Bill. That would be further articulated in Clause five (5) which speaks to what a child in need of care and protection would be and within that context, that is how psychological pain will be interpreted.

In terms of how it would be proved. There would be a requirement to depend upon expertise to put forward the support for whether psychological pain or injury has been caused. Those are the ways that you would seek to establish that psychological pain. In terms of financial abuse....

**Ms. Margot GREENE:** Excuse me. Am I allowed to ask you anything?

**Madam CHAIRMAN:** Proceed.

**Ms. Margot GREENE:** Thank you, Madam Chairman. If you are giving psychological pain its ordinary dictionary definition; that is not what the expert is going to use. If you are going to rely on the expert, then you would not use the ordinary dictionary definition. Remember, it is ordinary garden variety lawyers who would use this legislation. I find that a bit confusing. If you are going to use the ordinary dictionary meaning and you are still going to be relying on the expert to prove it, then, that expert is not going to be using the ordinary dictionary meaning.

**Ms. SHAWN RAINE BELLE:** Madam Chairman, through you, just to go through what the ordinary dictionary meaning would be. Psychological means the affecting or arising in the mind, related to mental or emotional state of a person; pain; mental suffering or distress; injury; harm or damage. The question would be, can having ventilated with the mental professional involved; can these results be recognised from a professional level? That is how you would be able to establish it.

In relation to financial abuse, where you are talking about withholding the financial support necessary to maintain a child. You could possibly delete it but the

thing is, is that something that ought to be recognised from a policy level? Many of these definitions have been informed by reference to a particular model and these are Organisation of Eastern Caribbean Countries (OECS) models; that would have imported with them, certain concerns about what should be protected and what should not be. As a matter of policy, the question is, whether you want to take this out or not and this is something else.

In relation to your submission about the fact that the definition of financial abuse usually includes identity theft, are you recommending then that it should be expanded to include identity theft?

**Ms. Margot GREENE:** Yes, that would be the recommendation. With respect to the Section that says withholding financial support necessary to maintain a child that would usually be the purview of the parent because it would be the parent who is entitled to receive the support for maintenance, I assume for the child. I do not see how it would impact directly as financial abuse, if you see what I mean.

**Mrs. Kaye WILLIAMS:** Through you, Madam Chairman before you answer. What about a situation where a significant asset was left for a child? It is not just financial support being withheld; a significant asset or monies were left for a child and that person; either manipulates the child or deprives the child of that asset. In a real way, we live in an internet world. Children are making money from the internet and could also make money in their celebrity status with respect to a particular talent. That child may be deprived of earnings while it is a minor. Someone could be perpetrating financial abuse. We are asking you to expand it, not to take out the financial support because financial support is just a narrow aspect of financial abuse which could be to disenfranchise a child from an entitlement that they may have, when they become an adult.

**Ms. SHAWN RAINE BELLE:** Madam Chairman, just to acknowledge that I take the point in relation to that aspect, so it is just an expansion then to include identity theft and then also those specific earnings that could be generated.

**Mrs. Kaye WILLIAMS:** Earnings, inheritance or entitlements.

**Ms. SHAWN RAINE BELLE:** Okay. Madam Chairman, through you to continue. The definition of guardian as having legal responsibility and authority for the making of decisions with respect to a child. In the context of the Bill, we are looking at the person who would be responsible for that child. When you look at the definition of parental responsibility in Clause two (2), it speaks to all of the duties, obligations, liabilities *et cetera*, that are imposed on the parent or are the responsibility of the parent, in accordance with the law. That is what would have informed the legal responsibility for making decisions with respect to a child as it relates to the definition of guardian.

In relation to parent, the Bill is not speaking to the definition of parent in the widest sense but specifically the parent who would have the legal responsibility for the child in the circumstances because at the end of the day, the Bill

as would be spoken to in Clause five (5), the intervention is based on whether the child is in need of care and protection.

In relation to the definition of physical abuse; where it is queried if the word omission should be included here. I have the comment that it can be deleted but the thought process was basically that if it were that by you not doing something, it resulted in abuse, then it should be taken into account. Perhaps it is that we need to revisit, what omission would cause and then revisit to suit if you are thinking that it should be more precise in orientation. This would not be similar to verbal abuse but I take the point that the reference to silence can be deleted and so it is a form of abuse but needs separate consideration; so I can take the point in relation to those definitions.

**Ms. Margot GREENE:** Yes, in relation to acts of omission and silence. We think that these should be dealt with separately. These are important and should be taken into account because they can affect children adversely but they should be separate.

**Ms. SHAWN RAINE BELLE:** Yes. That can be taken into account that omission should be dealt with separately and in reference to silence, we would have to find the appropriate terminology in order to insert but yes, it could be dealt with separately as well. In relation to the views being sought and the insertion of the age. Clause 3(2) and Clause seven (7) which speaks to the parameters for the participation of a child in the context of decisions having a significant impact on him; you would note in Clause 7(2)(b) there is given the opportunity for the child to freely express his views according to his abilities, age, maturity and developmental capacity.

It is not that it is just to be blanketed but that you would take into account the age of the person and the ability to express. The point is to give a platform for the child to participate in those decisions. It is noted that further articulation can be taken in the Regulations but I would draw your attention to the fact that it is said that it is a situation where you are trying to provide that platform for the participation. The child's age would be taken into account in terms of the capacity to even be able to submit for those purposes.

In terms of Clause 5 (1) (f), the word "moral" has been identified as a....

**Ms. Margot GREENE:** May I make a comment please? May I comment on what she just said?

**Madam CHAIRMAN:** Go ahead.

**Ms. Margot GREENE:** Thank you. We still have a problem with leaving the method of gathering a child which is so open-ended.

**Madam CHAIRMAN:** I did not hear that. The method of...?

**Ms. Margot GREENE:** Of getting the child's views is so open-ended; you do not have any restrictions. You can get the wishes of the two-year-old, presumably, a six-year-old or a ten-year-old. I know this is not the Family Law Act but in that Act, a child whose wishes are taken into

consideration would be from the age of 16. Granted, I think it could be an earlier age. I still think that there should be still some indication as to what age it is appropriate to take this into consideration.

**Madam CHAIRMAN:** Thank you. Ms. Belle.

**Ms. SHAWN RAINE BELLE:** Madam Chairman, through you, just to point out the persons who would be involved in taking this information. Even in Clause 7 (2), it speaks to the Director shall provide the child with the following. The Director then, with the expertise of who most have a background in sociology, psychology and the like, would be trained to take that information into account in a way that respects the fact that you are dealing with a child. In fact, that is how they are supposed to be trained. Again, this is an area that then has to be dealt with in the intervening period because this Bill is supposed to be subject to proclamation. Certain administrative interventions would have to be made in order to make it or fully flesh out. The presumption is that the Director and their staff would have the capacity to be able to collect information efficiently from a child.

**Mrs. Peta-Gaye LEE-BRACE:** Madam Chairman, if I may, you are going to have a problem. If the Director is tasked with finding out the views of the child; he or she is going to be conflicted because he or she is mandated by the Act. If he or she deems it necessary to seek a court order, what should happen is that really an independent person should interview this child. Perhaps, you should have a cadre of psychologists on call that should a case come to light that child is referred to one of these cadre of professionals on call. You are going to have a challenge if the person, who under the Act, goes to court for an order; be the one that is interpreting what is this child is saying.

You are going to have a challenge because it is not going to be an independent assessment.

**Ms. SHAWN R. BELLE:** Madam Chairman, yes, Part III gives the capacity for the Director to do investigations, interventions and other types of activities. As such, they have to be equipped with the capacity to take the necessary information that they require, so that would also include dealing with the participation of the child under Clause seven (7). You would also note that if there is an issue in relation to the position of the Director, that can be challenged also through Clause 7 (5) which allows for an appeal of those decisions.

**Mrs. Kaye WILLIAMS:** Through you, Madam Chairman, we are just saying that as attorneys-at-law, we quickly see the areas for challenge. It is just a matter of indicating what the priority is in respect of the Act. I would say that you will find it repeatedly challenged if there is not that level of independence between the person who is seeking the views of the child and the CCB or the Authority. Thank you.

**Mrs. Peta-Gaye LEE-BRACE:** Just for clarification, the court has very strict guidelines as to who is able to present to the court, the wishes of the child. It is not at-large. It is recognised that the ordinary person, however academically

qualified, is not specialised to tease out what the child is actually saying. You have a myriad of circumstances or situations where children come to you saying one thing but unless you are properly trained, what the child may be mouthing, is exactly the opposite to what they are really feeling.

Caution must be taken. Just saying that the CCB Director has a sociology degree or psychology degree is not enough. It is an area that is specialised, so there has to be some caution here. Getting the views of a child, particularly if the child is a young one, I cannot express enough that caution needs to be taken because you are going to run into problems. If you want a matter tied up in the courts for years and years without resolution; this is where this is heading.

**Ms. SHAWN RAINE BELLE:** Madam Chairman, this particular provision exists from the OECS model that is successfully operating in several other jurisdictions such as, St. Lucia, Grenada, Dominica, *et cetera*. Also, it operates successfully in Trinidad which has like provisions. The Director is identified in those pieces of legislation as having the capacity to deal with soliciting that information from the child, especially in the context of the fact that he would be doing a lot of the investigations and interventions under Part III.

I am just pointing that out for the purposes of the discussion.

**Mrs. Kaye WILLIAMS:** Through you, Madam Chairman, we just expressed our note of caution. Thank you.

**Madam CHAIRMAN:** Thank you. Any further comments, Ms. Belle on the rest of it?

**Ms. SHAWN RAINE BELLE:** Madam Chairman, in relation to 5 (1)(g) and the Bar Association you would take note that I am going through your matrix so I am trying to be as thorough as possible for purposes of discussion. Best interest of the child as defined in Clause 3(2) is the governing principle here. Where you are talking about the fact that there is potential for the victim of the domestic abuse to be punished but the fact of the matter is it is the best interest of the child that has to be taken into account and if it is in the environment that exposes them to the danger, this must be put at the forefront rather than the interest of the parent. In context, that is what is communicated here.

Madam Chairman, in relation to Clause 5(2), a child in need of care or protection may seek the assistance of the Director. I think that it was asked whether or not this was meant to be there and yes, it was an expressed intention. An expressed view that allows you to give the child a capacity to seek assistance from the Director. This has to be read carefully in conjunction under Part III with Sections 22 and 23. If you go to Clause 22, it speaks to where the Director may intervene but also in drawing back to Clause 5 (2), you talk about the request for intervention. Here is where the Director then would go into the veracity of the particular report and there are specific parameters

where the Director would consider the appropriateness of providing or arranging such assistance as is necessary to enable the child and the parent to resolve a conflict without recourse to legal proceedings. To ensure that the child is adequately cared for, supervised or protected or enable the child and his parents to have adequate appropriate services. It is not just something blanket'; but that there is a weight that is given in relation to when you can intervene and empowering the Director to ventilate and investigate as much as possible, any request for intervention and any request for assistance.

In determining in Clause 22, the appropriate response the Director shall have regard to the following: -

- *immediate safety and welfare of the child and any other child in residential setting of the child*
- *the age and maturity of the child*
- *the disability of the child and*
- *the existing circumstances of the family.*

**Ms. SHAWN RAINE BELLE:** In relation to Clause 7 (1).

**Madam CHAIRMAN:** Ms. Belle, can you just pause for a minute. We have exceeded the time allocated for the session so it may only be extended if there is a motion for an extension.

**Senator J. A. KING:** Madam Chairman, I would like to move that there be an extension.

**Madam CHAIRMAN:** I am recognising Ms. Cynthia Forde as seconding. Thank you. Proceed.

**Ms. SHAWN RAINE BELLE:** Madam Chairman. Thank you.

**Madam CHAIRMAN:** Did you say an extension for 10 minutes. Did I hear that.

**Senator J. A. KING:** I will add it now. For 10 minutes.

**Madam CHAIRMAN:** Okay, thank you and that is seconded.

**Ms. SHAWN RAINE BELLE:** Madam Chairman, I will try to. I just want to give you the benefit of the discussion. I will go to Clause 7(4) which speaks to the legal representation. I take the point that the legislation should speak to how this representation should be made. In the Child Justice Bill, we would have done Consequential Amendments where we intervened in the Community Legal Services Act to take into account proceedings in the Child Justice Bill and in the same way, in the Second Schedule to this Act, there are provisions for Consequential Amendments so that kind of intervention can be made for there.

As it relates to the concern about The Hague. I would have spoken to this in the last presentation but just to make absolutely clear for the purposes for persons who are streaming; there is transitional provision in Clause 67: Savings and Transitional, so with effect from the commencement of this Act then the assets liabilities, rights,



privileges, obligations and the like will transfer from the Child Care Board to the Child Protection Authority.

As you would have recognised, the Child Care Board Act will be repealed and this transition then has to be done in order to preserve all the obligations that have to be met and included in those obligations would be the same as regards to The Hague Convention.

As it relates to the mandatory reporting. From the perspective that there was opportunity given for consultation arranged by the Ministry with stakeholders; I am aware of that meeting but I do not know exactly who was there apart from just the parties in groups; collective groups and I cannot speak to that. The Ministry would have had to been here to give the full explanation of how that consultation was done; but there was a consultation.

The Section does have in operation the statutory exception in relation to attorney client privilege and that was mirrored in the OECS model and so it was included here. Those models do not include the doctor-patient and the other matters dealing with the priest and I suspect as a matter of policy, it is excluded because ... well let me speak to doctors. They would be in a position to see you when there would be harm involved. In relation to the confessional; this is something that would have to be looked at from a policy level in terms of the inclusion.

One of the questions that I would have is the flipping; whether or not that privilege should be extended to attorneys where you are given the seriousness of the matters to be reported. In a sense, that answers itself because usually in legislation you would include that attorney-client privilege because it is imported as a part of general rights but what I am raising is that it is included but then those other things need to be discussed at a policy level and properly ventilated and discussed.

Let me go to some important ones. In terms of the Custody Care Order, I will say that we did go into Clause two (2), to define the orders and the Custody Care Order was not there. It is discussed in Clause 42 as it relates as to how it is supposed to be interpreted. As not to be confused with a Custody Order which deals with the custody against the backdrop of the Family Law setting.

If I speak to Clause 42, let me go to Clause 42, which is where the Director assesses that there is not a realistic possibility of restoring a child to the custody of a parent pursuant to the provisions of the Act and it is in the best interest of the child that he no longer lives with his parent, a least restrictive option is not available, the Director shall make an application to the Court for a Custody Care Order and that would then be put in place where, as you can see in Clause 42(5), the Custody Care Order places a child in the custody of the Authority.

The Bill gives the parameters for how this Order should operate but as a concession to you, I can say that you would have to insert in Clause two (2), the definition of Custody Care Order as described in Clause 42 which is how the other orders are defined.

**Ms. Margot GREENE:** Madam Chairman, I still do not

see how you get a Custody Care Order. Custody is one thing and care is another as a legal definition. Custody is one thing; care and control is something else. You can have physical care and control without having custody, so I do not understand why you are calling all one thing.

**Mrs. Kaye WILLIAMS:** Through you, Madam Chairman. We would caution because the Family Law Act which is well established and over 40 years old with all of the provisions of the Family Law Act, they make it quite clear what is a Custody Order as opposed to a Care and Control Order. To create another type of Order, under another Act in relation to a minor or a child, would only create confusion in the law, respectfully.

**Ms. SHAWN RAINE BELLE:** Madam Chairman, through you, if it is that you create those parameters by virtue of defining them within the context of the Act, that confusion would not be there. It is that we put definitions in various pieces of legislation and the legislation itself provides the parameters for how it would be interpreted and this is no different. We would have seen that you would have said a Custody Order as opposed to a Care Order as opposed to another set of orders and this would be understood within the context of the Act as having to do with the Director, making a certain assessment and the Court then being able to put the child in the custody of the Authority, for the purposes of understanding that you are dealing with the care and protection of the child.

**Mrs. Kaye WILLIAMS:** Duly noted. It is our job to raise the issues and to say that if you wish to have this also caught up in Court, please feel free. Thank you, respectfully.

**Ms. SHAWN RAINE BELLE:** Madam Chairman, in relation to the social enquiry report, again there is provision within this Act. It provides the parameters in Clause 36 for how that report will be done. You are now introducing the Child Protection Legislation and you are giving the parameters for conducting a report so that it would inform the Court in relation to making certain decisions, primarily the giving of orders pursuant to Part IV, dealing with care and protection of the child. I am just saying that there are created parameters that are clearly set out in the Act.

I think at this time I will close but just to talk about Clause 38(1) where there is a part that talks about the inclusion of or reference to a psychologist or a psychiatrist. We could include the comments of the psychologist or psychiatrist within the Bill once the Ministry is on-board in terms of as a policy decision. That can be done.

**Madam CHAIRMAN:** Thank you, Ms. Belle. Any questions or comments from members of the Committee? I hear none, except Mr. Prescod.

**Mr. T. A. PRESCOD:** Let me ask a simple question. In the interest of getting things as right as possible, outside of the remit of the Committee. People who specialise; professional people especially in the law related to the rights of children; would the Committee recommend that a more extensive debate not restrained by the time of this Committee because based on what I am hearing, the

refinements of logic is constrained by the limitations which we have around the table and you are having practitioners doing interpretations of the provisions within the law and you are having a technical person also attempting to also explain what her perception is in relation to how we can interpret matters related to care and the custody.

I am wondering if within the interest of the highest principles that a society ought to accept, if those parties could be in contact with each other outside the formality of these discussions to see if they can pin this discussion now to the most practical kind of application of the legislation itself. I am just wondering if we can suggest that and if that is something that can be accepted.

**Madam CHAIRMAN:** Thank you. We recognise your concern as one to provide clarification, perhaps and elucidation moreso for the public purpose but even before coming to this point, there would have been provision for that and the attorneys-at-law at (CPC) along with other specialists who are attorneys-at-law and child advocates and so on, would also have had input into the Bill along with the different agencies like the Probation Department; Child Care Board and so on. I do not think that it comes before this Committee for us to suddenly become experts at law but certainly from our respective perspectives to hear the different arguments and to have our own further reflection and balance these. Just for the record, so that the public can be satisfied as well as us here in the room, that these matters would have been weighed in on extensively over a period of time. There is nothing, even at this point in time, not within the scope of this Committee's work but certainly for the Bar Association or any other agency to reach out to those specific areas to get further exchanges going.

I am sorry that the parent Ministry is not here because they would have the full list of institutions and persons that were engaged. I must admit that I am limited in that regard but only operating based on the recall of some of the institutions that were involved; child advocates who are also attorneys as well and who would have been examining the language and the implications and so on. I see that the representatives from the Bar Association are not asking for the microphone again, so I take that to mean that they are satisfied; not in agreement but satisfied that the exchanges have achieved as much as they can achieve.

**Ms. Kaye WILLIAMS:** I do not think the word "satisfied" would be quite accurate, Madam Chairman. We have done our job and we are grateful to you for the opportunity. Thank you.

**Madam CHAIRMAN:** Thank you. I recognise Ms. Belle.

**Ms. SHAWN RAINE BELLE:** Madam Chairman, just in relation to participation of stakeholders; certainly the model was informed by an expert in the field, consultant Jacqueline Sealy-Burke. Also, there were a number of stakeholder meetings with the Probation Department; GIS; Criminal Justice and Research; the Magistrates; the Barbados Police Service; the Registrar, Registration Department; the Child Care Board; the National Council

on Substance Abuse; other Ministries concerning the issue, as well as attorneys. I have that in the note and also participation from international agencies. Thank you.

**Madam CHAIRMAN:** All right, thank you. I think that that fairly brings us to the end of this particular session and I can therefore entertain a motion for us to suspend for lunch.

## SUSPENSION

**Hon. C. A. LANE:** Madam Chairman, I beg to move that we suspend for lunch at this time for one hour.

**Madam CHAIRMAN:** To resume at 3 p.m.?

**Senator J. A. KING:** I beg to second that, Madam Chairman.

**Madam CHAIRMAN:** Thank you, we will resume at 3 p.m.

## RESUMPTION

**Madam CHAIRMAN:** Good afternoon Members of the Committee. This Committee is back in session. We had a very full morning. So far we have been able to examine evidence from three (3) institutions and according to our plan of work for the rest of today's session, we should be starting our review of the Child Protection Bill, going through Section by Section. The anticipation would be that once we have concluded the Child Protection Bill that we would then go on to the Child Justice Bill and follow in a similar vein going through Section by Section.

Coming off our discussions with the Bar Association earlier in the afternoon, what they indicated was that their submission focused only on the Child Protection Bill and they now need to follow with a submission for the Child Justice Bill. What I indicated to them is that today was the last day for examining submissions. If there was a situation where they felt that there was something particularly egregious in the Child Justice Bill, then maybe, I could not call it a window because the window is pretty much closed, but there might be an opportunity to have the window cracked open slightly for us to review, if they were able to make a submission before Friday because we anticipate that by Friday we should be able to conclude our work.

The truth is, we might not be able to conclude by Friday but our aim would be to see how far we could go. In the event that they send something by Thursday or so, it will still give the Committee an opportunity for their clarification based on our understanding and analysis to see if there is anything that merits our further reflection. This is to just Members of the Committee on the same page.

We have to go through Section by Section, reflecting carefully on the written submissions that were sent to us and the oral presentations to see where, if any, we will be proposing for amendments to be made. That will be the point of the Section by Section. We recognise that



even though the Committee will identify some aspects for consideration, there will be some areas that will still be left to policy decisions that we will have to have the weigh in of the parent Ministry. I do anticipate strongly that the parent Ministry should not want to defer from the recommendation of the Committee to any degree possible. I believe it is over to the Clerk for the calling out of Sections.

I am understanding that the Chairman is to do this. We have the arrangement of Sections on page two (2).

**Ms. SHAWN RAINE BELLE:** Madam Chairman, just to indicate that perhaps you need to start with the objects and reasons, which provide for the long title of the Bill. To that extent, perhaps there can be an intervention considering the many submissions that seem to be unclear about what the Bill is about, that you would intervene to say that it makes provision for the reform of the law. I just had it in my mind, give me one moment.

**Madam CHAIRMAN:** Under objects and reasons, I am just verifying that everyone is still referring to the document dated 24 January, 2023? As it reads, "Objects and Reasons: This Bill makes provision for the reform of the law on the care and protection of children."

**Ms. SHAWN RAINE BELLE:** Madam Chairman, through you, it would be, "The Bill makes provision for children in need of care and protection."

**Madam CHAIRMAN:** "...for the reform of the law for children in need of care and protection...", or taking out all of that?

**Ms. SHAWN RAINE BELLE:** You are taking out, it would read, "This Bill makes provision for children in need of care and protection." As stated, that would then become the long title of the Act.

**Madam CHAIRMAN:** The subtle difference as being proposed will be that it is hoped that it would make it clearer that the Bill only kicks in where a child is in need of and is not for the care of all children.

**Ms. SHAWN RAINE BELLE:** Yes.

**Madam CHAIRMAN:** Okay. Members of the Committee are there any objections? There being no objections to the amendment, we move on to page two (2), Arrangement of Sections. Page two (2) is Part I - Preliminary, Part II - Administration.

#### *Asides*

**Madam CHAIRMAN:** We are on Page two (2). Do I have to call through each of these things? Clause one (1), Short Title, there is no change. Clause two (2), Interpretation.

**Ms. SHAWN RAINE BELLE:** Madam Chairman, I think there was an agreement to insert certain definitions. Unfortunately, it would not be as refined as you would like but in terms of dealing with verbal abuse for instance, you would be deleting the reference to "silence".

**Madam CHAIRMAN:** Under verbal abuse on Page 15.

**Ms. SHAWN RAINE BELLE:** Yes. It is referring to

whether communicated by silence. It was agreed that you would have to address this in some other way and so, the question is how you would deal with silence as a form of abuse. I did have a conversation with the Director of the CCB who indicated to me that they could get back to me in terms of language, so I do not know whether there can be any accommodation for that.

**Madam CHAIRMAN:** They would be proposing language on non-verbal abuse?

**Ms. SHAWN RAINE BELLE:** Yes, basically. The problem is classifying what silence would be. Non-verbal abuse would be good but it is just whether there is any specification as to how you would refer to it collectively. You can put "non-verbal abuse". It would then appear in the appropriate alphabetical order. It would appear after "neglect of a child".

**Mr. T. A. PRESCOD:** Body language.

**Ms. SHAWN RAINE BELLE:** You see, that is where it goes but the fact of the matter is that you still need to deal with silence. Yes. This is what was agreed to in the meeting. You would remove it from the definition of verbal abuse but then you have to find another place to put it. Yes.

**Senator J. A. KING:** Thank you. When you speak about psychological harm, in my mind, acts like that create exactly that same environment of psychological harm. If you have a child, you do not verbally say anything to it but if each time you walk beside the child and you have your fingers like pointing at it; you are not verbalising anything but you are causing them harm because they cannot figure out what is this all about. It is hard sometimes for people to understand but there have been alleged cases of persons who in an argument, a married couple and the gentleman would not speak to the woman at all but he would come home, sit on the back step with a cutlass and just slap it every day.

The message that you are sending to that person is enough to drive any person crazy because you do not know what it is that person is thinking or what it is he or she intends to do; but he or she is abusing them by the actions that you take without any language at all. You are communicating something. As to what it is, the person cannot say. The mere fact of unknowing creates a psychological problem. I just wanted to put that on the table.

**Ms. SHAWN RAINE BELLE:** Madam Chairman, it is just that it is matter for which policy direction I think is needed from the Ministry. Even if it is not only the CCB that should get involved but other stakeholders to make sure that this form of abuse is provided for but also that it is categorised correctly. Thank you.

**Madam CHAIRMAN:** My understanding is that we will flag this; park it for now and come back to it whether in an expanded definition of emotional abuse, non-verbal abuse or some other form. The understanding is that we are going to treat to silence but just take it from being expressed under verbal abuse.

**Ms. SHAWN RAINE BELLE:** Yes, Madam Chairman.

**Madam CHAIRMAN:** If the Committee agrees, we can asterisk this to refer to it. Can we defer this one under Interpretation?

**Ms. SHAWN RAINE BELLE:** Madam Chairman, also, we need to insert a definition for “custody care order”. Basically the definition would read as follows:

“Custody care order means an order made under Section 42.”

These are the special custody care orders where the Director would apply for it and then, the custody of the child would be vested in the Authority.

**Madam CHAIRMAN:** “Custody care order” to be inserted after the definition of court.

**Ms. SHAWN RAINE BELLE:** Yes, Madam Chairman.

**Madam CHAIRMAN:** Still under Interpretation.

**Ms. SHAWN RAINE BELLE:** Madam Chairman, in relation to “physical abuse”, deleting the words “or omission”. Again, this is another area where we would have to define for the purposes of classifying “abuse”, what an omission would be. We would need an asterisk in relation to policy direction as to how to make provision for this type of abuse.

**Madam CHAIRMAN:** In a similar way that we are treating to “silence”?

**Ms. SHAWN RAINE BELLE:** Yes, Madam Chairman.

**Madam CHAIRMAN:** Anything else under Interpretation? What was decided on “financial abuse”?

**Ms. SHAWN RAINE BELLE:** Madam Chairman, yes, in terms of “financial abuse”, it was to be expanded to include identity theft and then also those earnings or sums that are to be given for the benefit of the child. It is like earnings or inheritance.

**Sen J. A. KING:** Monies that may be accumulated from the internet.

**Madam CHAIRMAN:** Right. That would be earnings.

**Mr. T. A. PRESCOD:** How would royalties or if a person died within the definition of what constitutes a child but because his creative work, there is a probability of earning more after his death, how would that be captured?

**Ms. SHAWN RAINE BELLE:** This is where they are going. What you are talking about would still be classified, in my view, as earnings. So far, I have earnings and inheritance then there is that property or monetary sums that are to be given in trust so again that is specialised so I think we would have to spend some time on it but the concept is that the financial abuse should be expanded to include all of those concepts and there is the identity element. As a consequence of some of the retouching, it means that abuse would be expanded then most likely to deal with the non-verbal abuse and then the omission.

**Mr. T. A. PRESCOD:** Would you not have to look at the Intellectual Property Act to make sure that there is no definition in there that would come into conflict with whatever you add to the expansion of abuse?

**Ms. SHAWN RAINE BELLE:** We would have to look at

copyright and so on, but usually collectively it is spoken to as Intellectual Property but again, it has to do with earnings so it would be classified as earnings. What you are not getting quite is the gifts and then those sums that are sums or property that are invested in trust for the child. So those are concepts that also have to be covered.

#### *Asides*

**Madam CHAIRMAN:** Additionally, under emotional abuse there was a query raised about psychological pain. What is the definition? What is psychological pain? Is there any contemplation that we should include the definition on that or are we satisfied that emotional abuse captures it?

**Ms. SHAWN RAINE BELLE:** Madam Chairman, just to say that the composition of definitions... the thing is in terms of Legislative Drafting you do not define every single word that is ever used ever in the legislation which is why they are times where if you use a word then the ordinary dictionary meaning would apply which is what I was trying to explain within the proceedings, the earlier proceedings, because it is a question of understanding what those words mean and then you being able to establish an expert who can look into what that psychological pain would be and what that injury would be.

If we go into defining, then it goes to the issue that the Bar Association was attempting to raise, I think which is, if you have this word and I am referring to ‘psychological’ why don’t you use it then? I do not know if you know this book that talks about the disorders and so? Right. Are we going to use that to then inform this and categorise every single disorder? That is not how you would approach it.

How you would approach it is to give the most flexible and broad classification you can give unless it is that it has to be very specific because definitions you can narrow and delimit; you can expand but not to the point of absurdity like calling a chair a table or that sort of thing. In this case, to my mind the language is clear enough on its own.

**Madam CHAIRMAN:** Any other Sections? Parts sorry, under...

**Mr. T. A. PRESCOD:** I am not a lawyer but if you leave the definition too open, would not that place the emphasis on judicial precedence which would come from the law court and that will close the definition of it as a consequence of what the judge says in relation to his interpretation.

**Ms. SHAWN RAINE BELLE:** No. But then if you make it more specific what are you tying it to? Are you tying it to the professional understanding of what psychological pain or injury would be? Are you tying it then in a way that is framed by a certain profession or otherwise? It will become burdensome for everyone which is why you rely on the dictionary meaning and allow for the jurisprudence to grow. That happens naturally in legislation because Acts are breathing things so there is an understanding that starts to develop and it is not everything that you can draft in to

deal with it.

**Mr. T. A. PRESCOD:** We know Acts are breathing things but also words are breathing things. Humpty Dumpty once said to Alice, whatever word means within its context is precisely what the word means. You understand. So that might be kind of a story narrative but it is a good example. Words are what they mean within the context in which they are being used.

**Ms. SHAWN RAINE BELLE:** Which is a canon of interpretation as well in the Latin and forgive my Latin "*noscutur a sociis*". You are judged by the company you keep; the meaning of the word would be judged by what is around it in the specific frame provision itself but then also in the wider context of the Bill itself. Just to bear in mind what would come into operation because one of the things that did arise is the idea or the notion that somehow the drafting of legislation is creative writing. It is not. It has a number of rules that have to be applied.

**Madam CHAIRMAN:** We noticed this morning that there was a suggestion that harm needed to be defined. We were told that we did not define danger or harm but danger is there defined as meaning physical, sexual, verbal or emotional harm and I take the point that we all must recognise that you can define every and any thing every word that is present in the Legislation but the question is whether or not it is necessary. If the Committee sees and I am just reflecting to make sure out of an abundance of caution, that we cover all bases in our review. Is there anything further in Section two (2)? I personally do not recall anything else.

Can I take it that besides those points that we have highlighted to come back to, we can then move on to Section three (3), the Purpose of the Act?

Section 3(1)(a): The Purpose of the Act shall be to ensure compliance with those bulleted entries. Anything at Section 3(1)(a)?

**Ms. SHAWN RAINE BELLE:** Madam Chairman, I would just raise Section 3(1) generally just to make absolutely clear that in the same way that we revisited the Objects and Reasons to "(c) to provide for a child in need of care and protection ..."

**Madam CHAIRMAN:** What is that?

**Ms. SHAWN RAINE BELLE:** Part (c) in Section 3(1)(c) to make absolutely clear that it would say: "...to provide for a child in need of care and protection."

To clarify further "... in accordance with Section five (5)". I think that should help to give clarity to persons in terms of the true intention of the Bill because regardless of how I may feel in terms of how clear the context was, you have to acknowledge the constituency that seems confused and so we are trying to meet with that to eradicate confusion.

**Madam CHAIRMAN:** In acknowledging that constituency that seems confused and notwithstanding our own understanding that the word "and" coming before subsection (e) means that all of these things are to be considered. Would there be any objection to rearranging the bullets?

**Mr. T. A. PRESCOD:** I got the impression from the presenters that this United Nations Convention on the Rights of the Child was wide and if the individual tenants in relation to the rights which we do not have here; if there is a specific element within there that allows the United Nations (UN) and the Authority on the legal power on which the Convention has to be interpreted to facilitate transgender activities, if it can be deduced from that document then I got the impression that there was a fear that such a thing might be imposed on local statutory law.

I do not know if you have seen that; if it has been a matter that has been taken into consideration by the initial persons who drafted the Legislation and if you would recommend that there be something by not showing that we are influenced so much by the international convention. If that was putting us at a disadvantage why not state specifically the social issues in the purpose of the Act more so than making reference in the international convention because if we put it in the Act then they would not have an argument to make, but if you are saying to me that the local statutory law must be accommodating to the international convention, I believe that we would be in a better position to avoid that kind of imposition, if we do not indicate in the Legislation and that is the purpose of one of the purposes in the Act that influences the decision in the formulation of the Bill itself.

**Ms. SHAWN RAINE BELLE:** Madam Chairman, when there were discussions about the inclusion of the reference to the international instruments, in the context of the discussion, it was actually seen as a good thing because what you were flagging was to say we are in compliance with world understanding of how the protection of children would be treated. This was a flag to say, we understand that we are a part of a community and we are acknowledging that community and say we stand in solidarity with that community and that includes the Convention on the Rights of the Child. I have the synopsis of what the Articles have but it is still like 54 Articles so it would still be a long time. Basically, to the extent that when I made my initial presentation, it was to underscore that the protection of the child; the paramountcy of the best interest of the child and ensuring the participation of the child; those were the main tenants that we wanted to make sure that people understood and were inculcated into the legislation because it was very important at the time.

The thing is the argument that people are making which is why the removal is problematic to me, is that they say that if you take this out that somehow Barbados would not be bound and what they do not understand is that we are already bound. Taking this out is not going to change that reality. What this does is reaffirm our commitment that we already made.

**Mr. T. A. PRESCOD:** I am a very suspicious man about international conventions and principles over the years, especially in law because I believe in many cases there are inhibitions to the democratic practices of the local sovereignty. I consider that to be sentiment because there are many things that are agreed and hold firm in, I call it

international law; there were put in there for specific purposes. All that I am concerned about is if, we are talking about 50 something different elements in it. All I am concerned about, is there one of those elements or tenants in the Convention that seem to give that breath where it could be subject to all kinds of interpretation? I know that we have not put in any objections on the signing of the Convention but ... let me tell you what is happening.

In Barbados, many things and I am talking it the way that I see it, intellectuals and opposition forces to Government policy, they believe that the Government is doing these things because they are International Monetary Fund (IMF) impositions. Sometimes if the Government goes straight out and says this is an International Monetary Fund (IMF) imposition. The Government is forced; either because of the lack of understanding of how you now interpret this matter or the Government believes it is best fit not to say that the IMF has said this must happen. You get views being expressed whether this is a home-grown policy. Now it is not that it is not home-grown because that itself needs a definition too.

This piece of legislation has caused a lot of controversy, whether it is on genuine ethical grounds or not and we are arguing strong in defence of people deliberately misinterpreting the purpose of the Legislation. We do not want to be in a position where that debate can be sustained against Government's policy and then we have to be struggling with an imaginary indictment that may force the Government into a state of retreat on anything that we do. I think that we need to be open on these issues because if persons hold those interpretations, it is not clearly expressed in the document but for some reason, legitimate, almost so-called sacred institutions, are arguing that it is inside the document and we seem not to be able to shake the argument off. I am just saying do not give any space for those persons to continue the argument in the form that it is in. I would love to really hear other voices on this issue.

**Senator J. A. KING:** Madam Chairman, I do not have a problem with any of this language at all. I think what needs to be done, if one has any doubts, is for persons to go and look at the Conventions that have been mentioned. Read them for yourself and see exactly what they say. I will go back to what was said earlier. If you take the purpose of this Act only in part, without taking into consideration all of the other things that it says, for example if we just go to a(3), it says "all other international instruments to which Barbados is a party with special regards to those which afford a child the necessary protection and assistance so that he can assume his eventual responsibilities within the community and for the full and harmonious development of his personality and to grow up in a family environment, imbued with happiness, love and understanding".

That in itself clearly sets out what you are seeking to do with this Bill and then it goes on to identify at (b), (c), (d) and (e) other aspects of it that would give you the same thing that is spoken about at the top and then it goes down to Clause two (2), where it states, "In determining what is in the best interest of a child, the following matters shall be

taken into consideration...." It explains quite clearly what it is all about. I understand the fear that some parties have in terms of the first thing you see, where it says "ensure compliance with the United Nations Conventions" and so on but as was mentioned by the Chief Parliamentary Counsel (CPC); we are members of a global community. We do not exist by ourselves and there are international things that you are expected to be a part of and I do not see where this should really be such a huge problem.

From what I have been listening to – and I could be completely wrong – all I am hearing is that they would rather have a shifting of the actual wording so that "United Nations" and "Declaration of Human Rights" are not the primary thing or the first thing that you say you want to comply with. If you move those words to the bottom, you are saying that you want to comply with it. If it is at the top, you are still saying you want to comply with it and if it is in the middle you are saying the same thing. If you put it at the end, you are still saying the same thing. I do not have a problem with it as it is but I will be guided by the other Members.

**Mr. T. A. PRESCOD:** Madam Chairman, just oblige me. I am not saying I want it at the beginning; at the end or in the centre. I am asking if it is deleted completely from the document whether it would not put us in a better position, so that we cannot say that the purpose of doing it was because of the United Nations Convention on the Rights of the Child or the Universal Declaration on Human Rights. Can we remove those things?

You see, legislation comes from the dynamics of the social environment at a particular time in history. A background of that nature is strong enough for all of the provisions that follow. What is the mischief or the wrong that we are trying to correct in the current social – and if some people want to argue on the basis of economics because I heard the point being made – environment of the land at the specific time.

Legislation runs on that. It does not have to run on the basis of what the international bodies say and that our laws do not have to state what is international. These are laws of Barbados, so I do not have to say that the law exists through these international conventions and I only consider myself to be part and parcel of that world community, if I adhere exclusively or adhere to that as a dominant factor in the persuasion or the influence of the Legislation itself. That is all I am saying. I am just putting it on the table and probably for persons with far more refined professional minds because I am not a professional nor even a pseudo-professional but this is what the layman is asking the professionals to consider.

**Madam CHAIRMAN:** Senator Rogers.

**Senator Rev. Canon Dr. J. A. ROGERS:** Thank you, Madam Chairman. I thought it came up in the discussions this morning that whether it is written there or not, we are party to these things, so whether you put it in or not, you are party. It does not make a difference. I do not know if it will pacify anyone. I think that cat is already out of the bag and there is nothing you can do about that. I would have

served as a Member of the National Commission on the Rights of the Child some years ago and it is considered a good thing to be complicit with these UN regulations that are held by most people in the world; that set the standard for how we operate.

I did not say much in the deliberations but the reality is that it has been the United Nations that has been championing the cause against the mutilation of children and has put it quite clearly that children are to be free to grow up without having to go through these surgeries and all kinds of things. The UN has been pushing it, not advocating for it but pushing against the mutilation of children, which was standard procedure for little children who were born with ambiguous genitalia or whatever. It had been standard prior to 2012 when the UN started recognising the rights of inter-sex children.

It was standard to mutilate them to shape them into one of the binary groups that we see; to make them male or female. Only to find out later on that some of children will grow up and they would not be what you thought they were. We should be proud that we are trying to comply with what the United Nations are saying because this is what the nations of the world got together and said. This is what we want for our children and this is how we are going on a universal basis.

**Madam CHAIRMAN:** Are there any other comments? My own view Mr. Prescod, is that I understand exactly where your concern is but sometimes in trying to address each and every concern and may be you look at it through one political lens, then there is another political lens to look at it through that shows something completely different.

I think that a lot of the comments that came surrounding this issue are comments not related to the Bill but that were trying to project onto the Bill and my only fear would be in removing it, although you would say six is half dozen because if it is there or if it is not there, Barbados has the same obligation.

Removing it would allow those who commented in ways that we recognised as not having relationship with the Bill, to perceive that they have won something that essentially does not add value but it gives people a cause. Supporting the comments that say it is actually a good thing for Barbados and for Barbados's reputation and so on to have us clearly not only being signatory but putting into law a number of the things that we have signed on to. I think it is a good enough thing and I would be so inclined.

The most I was thinking that could be done and even that I felt was a little silly but I would entertain switching around the bullets because if by having at bullet (a) you call it primary, then let me put it at bullet (e) but it is still there with an and before it which means that it is considered in the same way as all of the other things.

I personally do not support taking it out.

**Mr. T. A. PRESCOD:** Madam Chairman, I am not going to be contentious on these issues. I am just trying to stimulate some discussion on it.

Earlier in the session, not today, it was said by the

leading authority around the table for these technical things that if in order for the Conventions to become effective ... this is my understanding and my interpretation. Then the local legislation still has to have provision in it to accommodate and embrace it. All I am saying, is that if you exclude it, then the local legislation does not have anything clearly expressed because it is not an imperative that it has to be in this document.

I am saying that we have within the historical context; we have lots of experiences of fundamental changes that were made to legislation related to child; the freedoms and the liberties of children that could have placed us in a better position, if the historic reference or preamble was applied more so to references to international events. We have had so much of a historical background, bringing children from the stages where Madam Chairman, you should better understand this than I because we have had a historic experience of children's rights being abused throughout the 20<sup>th</sup> century; where we had child labour and bastardisation.

These are areas of legislation that in my view, the drafting of the document in this preamble, arguing on the basis of purpose could have included those historic references, moreso than put in the International Conventions in order to rationalise why we are going in the way which we are going.

You do not even have to change what is here. This alone can be changed and use a historic reference to the abuses that we have actually witnessed as a people in our history.

Madam Chairman, I am just putting those things on the table because I think that is the purpose of all of us being here. You can make the decision or the Solicitor General's Office can make the decision on if it is better to go in this specific direction. Take out all and replace it by a historical background of child abuse.

**Madam CHAIRMAN:** What is the specific proposal?

**Mr. T. A. PRESCOD:** To delete everything that makes reference to the international agencies, which serves as a rationalisation for the actual changes that we are going to make in the Child Protection Bill. We have had lots of Child Protection legislation already. In relation to purpose, you can make reference to those historical elements that we have actually addressed over the years as a people. Such as, child labour; child enslavement; denial of a child being a human being; *et cetera*. We can put all of that in there if necessary. I feel there is too much dependency on this kind of approach.

**Madam CHAIRMAN:** Are there any other views? It is a view being expressed by Mr. Prescod. First of all, I will have to see if it is supported by any other Member of the Committee. In any event, the comments from us will go back to the parent Ministry and they will make the final decision. Our responsibility is to recommend and convince but we can recommend and convince if it is the view of the Committee.

**Senator J. A. KING:** Madam Chairman, I just want to say

that although I understand what has been said prior, in my knowledge, all of the aforementioned ills that happened in the 20<sup>th</sup> century with children or whatever are covered underneath both the Convention and the Declaration of Human Rights as it relates to children. I do not think we would need to rebuild the wheel again because in those Conventions they are covered.

**Madam CHAIRMAN:** We were at Section 3(1). Sorry, Senator Rogers.

**Senator Rev. Canon Dr. J. A. ROGERS:** Madam Chairman, Section 3(1) and the opposition to some of the things that are there and the actual mention of these things. I like how it is here but I also recognise that there are political decisions that need to be made where these things are concerned. I will leave it in the air for the decision of those who wish to....

**Madam CHAIRMAN:** Senator King, I think Senator Rogers was responding to the question I asked about if there is any other support. He said he likes how it is but he will leave it to the political decisions and decision-makers.

**Sen. J. A. KING:** All I will say to that is that there is local politics and international politics. This should suffice.

**Madam CHAIRMAN:** There is a view that all politics is local. As I said, my position is I think that it is useful to have them included in the Bill but of course all comments will go back to the parent Ministry and they will be free to decide from there.

Section 3 (2). This section had to be referenced quite a bit during our examinations and I do not recall that there was any specific call for change to any aspect. Hearing none, we will move on to Section four (4): Principles to be applied in the administration of the Act.

I have something here but I do not know what it is saying.

At Section 4 (c)(i) and (ii), did we make a decision to invert the bullets one (1) and two (2)? I have an error here. I do not know why. Okay. Section four (4). No comments on Section four (4)? We are at Clause four (4). No comments on Clause four (4)?

We move onto Clause five (5): Child in need of care and protection which is also another area where there was significant discussion. I believe we may have one (1) or two (2) items to examine.

**Ms. SHAWN RAINW BELLE:** Madam Chairman, just in relation to Clause 5 (1)(f), the deletion of the word "moral". Madam Chairman, it is something that I would have mentioned in my initial presentation but the reference in Clause 5 (1) (m), the reference should be to Section 40.

**Madam CHAIRMAN:** Yes, instead of Section 39. Any further changes for Clause five (5)? We can then move onto Clause six (6): Request for services from other agencies. Hearing no interventions, we move onto Clause seven (7): Participation of a child.

Given that there are no interventions, I take it that we have concluded Part I and can move on to Part II on Administration starting with Clause eight (8): Establishment of Authority. There is established an

Authority to be known as the Child Protection Authority. Reference being made to the Interpretation Act. I do not believe that there were any proposals or comments to make amendment to that clause, so we can move onto Clause nine (9): Powers and duties of the Authority. There are about 22 of those.

Powers and duties of the Authority is quite extensive. I hear nothing. Clause 9 (1). Clause 9 (2). Clause 9 (3). Clause 10; the Establishment of a Board; the Child Protection Board. Clause 11 is a routine clause where the Minister determines remuneration and allowances for the Board and its Directors. Clause 12 speaks to the appointment and the duties of the Director. Clause 12 (4) allows the Director to delegate his functions, other than his power to another member of staff.

Clause 13: references the staff to Authority, outlining pension provisions and so on.

**Ms. SHAWN RAIN BELLE:** Madam Chairman, just to flag something. It is not necessarily that it is a change to the text. It is just going back to Clause 7 (4). It states, "A child shall be entitled to legal representation by an attorney-at-law in any proceedings or hearings in relation to the child." Mentioned in the proceedings with the Bar Association, it was agreed that in the Second Schedule, speaking to consequential amendments, an insertion would be made to have the Community Legal Services Act include proceedings under the Child Protection Act, so that there would be provision for payment. I just wanted to flag that. It could have been dealt with then in the Second Schedule but because it is connected with Clause 7 (4), I just wanted to highlight it. Thank you.

**Madam CHAIRMAN:** That is at 13.

**Ms. SHAWN RAIN BELLE:** Clause 7 (4).

**Madam CHAIRMAN:** Clause 15: Savings of Pension. Clause 16: Role of the Minister. Do we need to amend 16 (2) (a) to be consistent with care and protection? The Minister shall at (a), promote the care and protection of children. Anything else at Clause 16?

Clause 17: Child Protection Report.

Clause 18: Funds of the Authority.

Clause 19: Application of Funds.

Clause 20: The Accounts.

**Madam CHAIRMAN:** Committee, is it possible that we can go back to Clause 7(5)? Did we stipulate or did we propose a change to that? Where do views of the child differ from the position of the Director, the child may within 30 days of the notification of the position appeal to a judge in Chambers. Was there a change on that? Okay. So we are at accounts.

Clause 21 on Financial reports. This is again routine. If there are no comments at Clause 21, that brings us to the conclusion of our examination of Part II and we are onto Part III, Interventions, Reports and Investigation. These sections we are going through fairly quickly, these Clauses, because there was not much intervention, if any, on most of these.

Intervention Clause 22. Outlining where the Director may intervene.

Clause 23 A request for intervention.

**Mr. T. A. PRESCOD:** Somewhere during the discourse today, I think the Bar Association asked about having age limits. If you are putting the onus on the child to make specific complaints, there is a question related to the capacity and the specific age of the child. I assume to be able to make the comments with the required clarity, and give it legal force. In other words, you would not expect a child at ages three (3) or four (4), to be able to make a statement with the kind of structure and the kind of clarity that if committed, if somebody holds a counter view; if it would not create a body of confusion in the dialogue that is going on between the person who is questioning the child or the child making the statement which can be used as strong evidence against a person who is abusing them. That child might not have the capacity in order to explain it clearly, so then they were asking for a requirement of a professional person who would have the skills, if that is possible, to give clarity to exactly what the child is trying to say. Do you remember that discussion?

**Ms. SHAWN RAINE BELLE:** Madam Chairman, is this a matter of whether you are taking on board the comments that were made but I would mind the Committee that in Clause 7(2) specifically (b), the opportunity would be given to the child to freely express his views according to his abilities, age, maturity and developmental capacity. While you may think that they would be of tender years, they may have the capacity to speak to a certain situation with a fair amount of clarity even if they do not use vernacular, jargon or certain sophistication in language. There was the question of the Director being the person collecting the information.

The problem is the operationalisation of the Legislation because the Director is identified as one of the chief persons to be able to do that and in order for you to qualify for that position and those qualifications would have to be set in the Public Service Order but built in would be the capacity to question children appropriately. To insert this discussion about whether they are appropriate, it would mean that you would be questioning the capacity of persons across the board as identified in many pieces of legislation. It would not be just that. This one and that is the flag with it but again it is something that the Committee then would have to make a decision about.

As well the suggestion was for at 4(c); four (4) really, they were suggesting that ... the BAR was suggesting that caution should be applied to this Section so that where the child's opinion is sought there should be an age limit when such views would be taken into account. When I heard it I thought, you have specialists in respective areas that ought to know and I believe, know how to talk to people and get information and so on and where a statement comes that the child's views are given due weight and that wording "due weight" as well also says depending on the age of the child; the suitability of the

child; the capacity; that kind of thing; so ...

*Asides*

**Ms. SHAWN RAINE BELLE:** Madam Chairman, it also identified as a major point under the United Nations Convention in the Rights of the Child to provide a child with the opportunity to participate. That opportunity is not constricted by an age limit according to the Convention so the thing is it is to provide that opportunity but, of course, in the fleshing out of the understanding of it, these additional words of understanding the age but then you look at the maturity and the development and the person then, in doing the interview, would take that into account but it is to afford the child the opportunity to participate in a decision that significantly impacts on their life. It is a major point under that Convention that we are trying to hit.

**Madam CHAIRMAN:** Senator Rogers.

**Senator Rev. Canon Dr. J. A. ROGERS:** Along with this Legislation, I remember when we spoke in the first session, one of the things that came up was that the Legislation is there but then there has to be departmental policy which would set out how certain things will take place. I would like to think that what we are discussing here, in terms of the different ages of children would be set by the policy of the department in terms of how you approach a child of a particular age and so on.

**Ms. SHAWN RAINE BELLE:** Madam Chairman, even then, you can articulate some of that in subsidiary legislation so the regulations can provide specific guidance but the point is, to give the child the opportunity to participate in the decision.

**Madam CHAIRMAN:** We are still at Clause 23: Request for Intervention.

Clause 24: Mandatory Reporting.

**Ms. SHAWN RAINE BELLE:** Madam Chairman, just in relation to that, is more to do with not an omission but a question of whether an exception should be expanded so at Clause 24(5) there is an exception which says, "The mandatory reporting will be imposed on the one on the person's identified in one but one of the exceptions would be where you are dealing with attorney-client privilege." The question was whether that exception should be expanded then to doctors and the doctor-patient relationship and then in terms of the Catholic Church.

The latter one, in terms of the Church, policy direction is definition required but the medical practitioner, here is where you have to draw a line in the sand because they are the persons that would come into contact with persons who would have been abused and they would have training enough to see whether some kind of abuse is happening and as a matter of policy; given the seriousness of the abuse, to create a situation where the doctor does not report. That is problematic from a policy point of view.

**Madam CHAIRMAN:** Contrary to the objective of care and protection of the child. Senator Rogers.



**Senator Rev. Canon Dr. J. A. ROGERS:** Where the Church is concerned, what was spoken of was the Confessional Seal or what we call the Seal of Confession in the Anglican Church because both Churches have it. The confession is a sacrament; once a person speaks to a Priest in confession it comes under Sacramental Seal. In fact, it is one of the most serious things in the Roman Catholic Church; you can be excommunicated for divulging anything that is said in confession. The Church's Canon law prevents the priest from actually divulging that information because of the Sacramental Seal.

**Madam CHAIRMAN:** How does that fit into the discussion or the Legislation in terms of how you are going to address it? It is one thing to say the parent Ministry and in a sense, that is with them but it is also a cop out. What would be the Committee's view on where we can or should take this? Senator Rogers you are in a position where you should understand these things and we would be leaning on you heavily for guidance.

**Ms. SHAWN RAINE BELLE:** Madam Chairman, just to say that there are times where the law would trump or declare itself as trumping religious views so for instance, Barbados' stand on education is famous regardless of your religion; you shall be educated and you will be subjected to criminal penalisation if you breach it. That is a place, from a statutory point of view, where we have taken the view that the education of children is paramount and it will take precedence over the conscience of the person religiously.

**Senator Rev. Canon Dr. J. A. ROGERS:** It is one of those ethical things and that is why I said, let me just consult with a few people on it. I know in the Roman Catholic Church for sure, they can actually be defrocked, if they breach that but it is the ethical aspect where a person has trusted you with their information and brought their information to you but then there is the other side of it. If the information they have given me is causing harm to another person, how do I balance the two and so let me get some advice from some sages on it before I get back to you.

**Senator J. A. KING:** For me, I would have to lean more on the side of the laws of the land, to use your phrase, trumping the things of belief. I want to draw a scenario for you. If I go into confession, not I John King but a person, goes into confession and says, "I am a child molester..."

This is a difficulty that I have – inside the same house now it comes forward that this is happening to the child. Now to me, if the pastor or whoever has that information – I think Reverend Rogers went close to it – where do you draw the line in terms of helping the child in the situation? I would like to carry it a little further. Where do you draw the line when you become an accessory to a crime? You know via confession and you refuse to divulge what you know. For me, it is technical but it can become really contentious if not dealt with properly.

**Senator Rev. Canon Dr. J. A. ROGERS:** The purpose of the confession is for reconciliation of the perpetrator and that is why if you are focusing on reconciling this person

to God; the priest's duty is to get this person then to change his life. The other information is a different thing.

**Senator J. A. KING:** I fully understand but my position remains the same: Where do we draw the line where you become an accessory to a crime, or whatever? If you know this thing is happening; the person has confessed to you that, "Yes, I do these types of things" and it comes up now in a different place and the authorities call you in to ask you if this person has confessed this to you, and you are saying to me, "I cannot say anything because this is part and parcel of my religious belief, so to speak". I do not know. Like you, Senator Rogers, this is one that I would have to think long and hard on but I think I lean more towards the mandatory aspect; that person must say what it is.

What happens now is if I am of a different religion, will this apply to me too? If I am of a completely different persuasion than anyone else, will this apply to me? If I hold up my hand and say, "I am such and such a person and under that, I cannot say anything about anything," Will this apply? I am not sure that I can fully go that far on this one. That is the truth.

**Ms. SHAWN RAINE BELLE:** Madam Chairman, it is definitely something that needs to be brought to the attention of the Solicitor General and to see what advice can be given and that would be through the pilot Ministry in relation to it. My question too is, in the circumstances where a child in the same confessional says, "I am being abused" and identifies the person. It becomes problematic because you then have the abuser and the abused being in the same situation. Are you being loyal to both?

**Senator Rev. Canon Dr. J. A. ROGERS:** It is something that other countries are looking at. I know that a couple states in the United States are looking at it just within the course of this year in terms of seeking to pass legislation to break the seal of confession, especially when it comes to child abuse. So it is something they will have to look at.

**Madam CHAIRMAN:** Okay, so is the Committee agreed that that is one which we would definitely pass on to the CPC through the parent Ministry? We want them to pass it to CPC so it would be CPC, through them, to ensure that the widest possible view is given or attention is given to this particular concern. I guess you can really be ridiculous too and say that is the same thing that happens with client-attorney privilege, when you knowingly let somebody back into society to likely offend again.

**Ms. SHAWN RAINE BELLE:** Madam Chairman, there is also the right not to incriminate yourself and all of these different things, so it is bound in constitutional issues. The confessional part is one thing but I was wondering if we could actually get agreement about the policy in relation to medical practitioners because I think as a matter of policy; medical practitioners are supposed to be included in the obligation to report.

Currently, Madam Chairman, it appears, based on the Bar Association's submission, then you would have to take it out in Clause 24. Clause 24(1)(b). My thing is that I think it is included as a specific understanding that such



professionals would be the first line of defence in relation to reporting.

**Senator Rev. Canon Dr. J. A. ROGERS:** Madam Chairman, I tend to agree with that. Physicians will have access to minors in a way that many other professionals will not and will examine parts of the body which can easily be concealed; which can reveal instances of abuse of any kind, so I would concur with Ms. Belle.

**Madam CHAIRMAN:** Okay, so we are going to refer this one on with strong recommendations specifically that outline that an objection was raised but the Committee's view is that it should be retained, but in any event have a second look at it to make sure we are not missing something. Clause 24, the remainder of it, 24(2) to 24(9).

Investigation of a report, Clause 25. Here the onus is one the Director to investigate; to determine whether or not a child is in need of protection.

Clause 26: Records of reports and subsequent action.

Clause 27: Protection of persons who make reports. It is consistent with Whistleblowers legislation.

Clause 28: Investigation and assessment. That is a fairly lengthy Section but I do not recall that there was anything to it.

Clause 29: Action taken by Director. At Clause 29(6) we had included care plan. We had done that in an earlier meeting.

**Ms. SHAWN RAINE BELLE:** Yes please, Madam Chairman.

#### *Asides*

**Madam CHAIRMAN:** Clause 29(6), "Where a care plan is developed pursuant to subsection (2)(b), that care plan shall be signed by the parent of the child who is the subject of the care plan."

Clause 30: Decision against taking action.

Clause 31: Removal of child by Director. We had some fairly lengthy discussion on this when we received evidence from the Child Care Board. Therefore, if there are no changes or comments to Clause 31 that brings us to the end of Part III and moving to Part IV, Care and Protection Orders.

Clause 32 refers to a number of different orders that the Court may make and the subsequent Sections develop them.

At Clause 33, we speak about the residential protection and treatment centre order. Hearing no comments, we move on to:

Clause 34: Emergency protection order.

Clause 35: The Assessment order.

Clause 36: Social inquiry report.

Clause 37: Care order.

Clause 38: Care plan.

Clause 39: Care responsibilities and duties under care order.

#### Clause 40: Supervision order.

**Senator Rev. Canon Dr. J. A. ROGERS:** Clause 38, "The court shall not make a final order for the removal of a child from the care and protection of his parent or allocation of parental responsibility in respect of the child unless the court has considered a care plan." Is this for permanent removal?

**Ms. SHAWN RAINE BELLE:** This is for removal period because you have to have some kind of plan as to how to take care of the child and then the nature of what the care plan would constitute is discussed in Clause 38(3). You would see a number of matters from (a) to (j) in relation to what has to be taken care of in the care plan.

**Senator Rev. Canon Dr. J. A. ROGERS:** I raised it because how does it relate to Clause 31: The Removal of child by Director? That speaks to urgency where a court order cannot be obtained.

**Ms. SHAWN RAINE BELLE:** Clause 31 is a very special circumstance. This is almost operating outside of the orders until you bring it in. Okay, Clause 31(1) provides the situation where the Director can intervene and remove the child from the circumstances and then the prescription for how that is supposed to be executed is dealt with in (a) and (b) and then the sandwich part of the Section.

This is so extraordinary in orientation because the Director must then in 24 hours apply to the Court because of the extraordinary nature of what they would be doing under Clause 31. When they go and apply for the court order, the court in considering what order should be granted; would then have the submissions made for the care plan, which the Director would also formulate.

**Senator Rev. Canon Dr. J. A. ROGERS:** The child is already removed.

**Ms. SHAWN RAINE BELLE:** The child is already removed in that circumstance pending the order.

*(The committee chairman temporarily vacates the chair)*

**Mr. DEPUTY CHAIRMAN:** I think we were at Clause 39: Care responsibilities and duties under care order. Are there any questions or queries? We can move on.

Clause 40: Supervision order.

Clause 41: Duties of supervisor.

We had some caution on Clause 42: Custody Care Order.

**Ms. SHAWN RAINE BELLE:** Mr. Deputy Chairman, I heard what the Bar Association was saying. The fact of the matter is; I think the confusion would be entered in if we just called it a "custody order" or a "care order". We already have a care order. A custody order is an order that is dealt with under family matters. The reason why the "care" is inserted is because of the orientation of the Bill itself and in terms of emphasising care.

Custody is included because you are talking about giving custody to the Authority as articulated in Clause 42 (5). The

terminology is employed in the way it is because of the general orientation of the Bill and the purposes that it is supposed to serve within the context of the Clause itself.

**Mr. DEPUTY CHAIRMAN:** Any questions? None? Clause 43: Recovery order.

**Mr. T. A. PRESCOD:** Deputy Chairman, I would just like to go back to the "custody care". All I wanted to say is that the presenters then appeared to be quite positive that this is an area in which they can penetrate easily with a good legal argument because they were differentiating between "custody" and "care". It might be a good thing to spend a little time making sure that if this is a potential hole that we do all that we can to cover it. We might not have the legal jargon around the table to do so but I am just suggesting that the Chief Parliamentary Counsel take a look at it again.

**Mr. DEPUTY CHAIRMAN:** I would agree with you. I think when the reference was made to the Family Law Act, I believe it was at that particular point in time, that you may have conflict between these two pieces of legislation. It would, in my mind, give us a reason to actually look at what they have put forward to see if there is any overlapping of it or as was mentioned, what could become problematic.

**Ms. SHAWN RAINE BELLE:** Deputy Chairman, I have no problem looking at the terminology but the basis for the confusion I have a problem with because Section 42 makes clear what the Custody Care Order does. It provides the parameters for how it is to be understood within the confines of the Act. You cannot be confusing the custody order that would be given in the context of the family law legislation with child protection. I could understand if it was that it was called a "custody order" but it is not called so. It is called a "Custody Care Order".

If you are then wanting to change the terminology, it would be a question of what do you change it to. You can talk about a care and protection order and you can do that and if that would provide differentiation. I am just pointing to the weakness of the argument to say there is going to be confusion, simply because it is called a "Custody Care Order"; if it is that the Act already sets out the parameters specifically of how this thing would be interpreted.

**Sen. Canon. Rev. Dr. J. A. ROGERS:** You are saying that it is just an issue of nomenclature but the fact that the Custody Care Order is specific to this piece of Legislation and is a creature of this Legislation.

**Deputy CHAIRMAN:** Correct.

**Sen. Canon. Rev. Dr. J. A. ROGERS:** Okay.

**Ms. SHAWN RAINE BELLE:** What I was willing to concede to is that unlike the other orders; it was not covered in Clause two (2) which was why I recommended the intervention.

**Deputy CHAIRMAN:** Thank you. Clause 43: Recovery order. Any concerns?

If none, Clause 44. It is pretty straightforward. Clause 45. Clause 46. Let us look at Clause 46 where it states "A counselling or treatment order shall be made for

the purpose of providing counselling, therapy or any form of treatment necessary for the wellbeing of the child." I just want to get your opinion where we were earlier. I guess in two (2) sessions we have been bombarded with the whole idea of gender issues. I just want you to be able to clarify. For me, I interpret it that these things are not there.

Looking at it, one may get the impression, as was mentioned earlier, that this becomes a loophole for others things. I want you to just clarify it for the benefit of everyone here and those watching.

**Ms. SHAWN RAINE BELLE:** Deputy Chairman, this would be interpreted in conjunction with all of the other provisions in the Bill. In context, you would be providing for the counselling or treatment required; relating to the fact that the child is in need of care and protection. Those are the circumstances that would necessarily constrict counselling or treatment. You would not then be inferring the surgery or the sexual orientation changes because that is not what the Bill contemplates at all but basically, to provide treatment associated with the fact that the child is in need of care and protection.

**Deputy CHAIRMAN:** Any other interventions? Clause 47: Contact Order. None. Okay we can move on.

Clause 48. Pretty straightforward.

Clause 49. As was mentioned earlier, this says the authority may support which is again language where earlier we had the difference between 'may' and 'shall'.

**Ms. SHAWN RAINE BELLE:** Deputy Chairman, so as you may appreciate there are Government-run child care centres and then there are privately-run child care centres that are approved by the Minister and in fact, that is spoken to in Clause 53 when we get there; where the Minister has the power to grant approval of Child Care Centres. This then is put in a discretionary form in the sense that if you then put 'shall', it would then obligate the authority to also support private entities. That is why it is made discretionary.

**Deputy CHAIRMAN:** Thank you. We are at 2. 49 (2)

*Madam Chairman re-assumes the Chair*

**Madam CHAIRMAN:** 49 (2). Then we move on to Clause 50: Maintenance of Children. If no comment on Clause 50 then we are at the end of Part III and can move on to part IV: Child Care Centres.

**Ms. SHAWN RAINE BELLE:** Madam Chairman, Part V: Child Care Centres. So we just went to Part IV.

**Madam CHAIRMAN:** Part V. Yes. Part V: Child Care Centres.

Clause 51: Principles Guiding the Operation of Child Care Centres.

Clause 52. I believe I can almost hear Senator Brathwaite suggesting that we need to ensure that this is promoted more broadly. I believe that was one of his comments.

Clause 53: Approved Child Care Centres.

**Ms. SHAWN RAINE BELLE:** Madam Chairman, there

is a typo so Clause 53, The Minister may grant approval for Child Care Centres. Okay.

**Madam CHAIRMAN:** I'll take off that 's'.

**Ms. SHAWN RAINE BELLE:** That and putting in the word 'centres'.

**Madam CHAIRMAN:** Clause 54. Should that be the staff at (2) 54 (2)? "The staff of the approved Child Care Service" or?

**Ms. SHAWN RAINE BELLE:** Yes, that should be 'centre'.

**Madam CHAIRMAN:** Clause 55: Delegated care responsibility at approved Child Care Centre.

Clause 56: Contact with parents and relatives.

Clause 57: Application for a Recovery Order.

Clause 58: Order to contribute. I actually like this. A lot.

Clause 59: Corporal Punishment in Child Care Centres. No comments so that brings us to the end of Part V and we can move onto Part VI: Offences.

Clause 60: Unsupervised or Unattended child. Sorry Senator Rogers.

**Senator Rev. Canon Dr. J. A. ROGERS:** I think there was a question to this one in one of the presentations; where the Bill does not seem to make the State accountable, hold the State accountable. I think the question was raised why. Why only a term of two years for someone who breaches the Clause 59 Section (2). Why two (2) years and not the five (5) as it is for someone who, for example, removes a child from the Child Care Centre. It was just there. Right. If you look at 56 (5) the person who contravenes subsection 2,3 or 4 is guilty of offences liable to a summary conviction of 25,000 or a term of five (5) years for removal for example the child from an approved Child Care Centre but then why is the State; a person who is acting on behalf of the State if they abuse a child through corporal punishment they only get a fine of 10,000 and two (2) years? I think that was raised.

**Ms. SHAWN RAINE BELLE:** Madam Chairman, this is the removal in Clause 56; that was regarded as a higher offence in the circumstances and additionally in terms of the corporal punishment; that again would be considered more.

There was also a question about why there was no imposition of the restriction of corporal punishment in schools and then generally on parents. For one thing, that is not the intention of the Act; the use of corporal punishment by parents generally and in particular with education, that would require an amendment of the Education Act. That would be where the appropriate amendment would be made. Just in relation to that policy point, in particular, there was a discussion as to whether the Education Act should be amended to make that change but then the Ministry on consultation with stakeholders decided not to include it.

**Senator J. A. KING:** If I may, also at Clause 59(2) which says: "A person who imposes corporal punishment, severe or frightening measures..." this could

be really ticklish and I will tell you why. I am seeing this from my own experience working in a particular place.

A person comes in and says I am an atheist and I have no dealings with nothing but you have other children who may very well be having a Bible lesson and the person then decides that I am afraid of Bibles; I am afraid of any of these things; I am totally in conflict with all of this and this thing is causing me stress. How are you going to deal with that?

**Ms. SHAWN RAINE BELLE:** Madam Chairman, just to remind everyone that drafting nor statutory interpretation is not creative writing. The severe or frightening measures would have to be akin to corporal punishment and the fear that would be inspired there. That is what would qualify those words from a statutory interpretation standpoint.

**Senator J. A. KING:** That is exactly what I am saying. If the child determines that as an atheist, this Bible thing that you are carrying on a Sunday afternoon or whatever, we are passing is scary; is frightening and is even threatening towards them, how do you say to the person that this is not threatening to you? Yet they are insisting that it is threatening to them.

I am just concerned that a person who may, with the best of intentions, find themselves in a position where they could be imprisoned for two (2) years or on summary conviction of \$10,000 based on the fact that from their own religious beliefs, they believe they are doing something good. I am just putting it to you because I have seen it already.

**Ms. SHAWN RAINE BELLE:** It is not really a situation of whether the child finds it frightening but what is being put forward as a policy point is that corporal punishment is seen as frightening and severe and that any punishment akin to that cannot be used. I can take the point that perhaps you may want further elucidation of what is severe or frightening, just to make it absolutely clear,

**Senator J. A. KING:** Because it says, "frightening measures ..."

**Ms. SHAWN RAINE BELLE:** The only thing I can say, Madam Chairman, is that would have to be dealt with at the policy level with the pilot Ministry and it would also affect the Child Justice Bill.

**Madam CHAIRMAN:** We take note of that, especially as it relates to the implications on child justice.

We move on the Clause 61: Cruelty to Children.

Clause 62: Personation.

Clause 63: Obstruction.

I think that earlier this is where there may have been some confusion too regarding the difference between "personation" and "obstruction". A person who impersonates a member of the Board or the Director versus a person who obstructs or threatens the Director or a member of staff of the Authority where the penalties are different.

**Ms. SHAWN RAINE BELLE:** Madam Chairman, in the context from the Legislation, the obstruction is viewed as

a lesser offence than the other and you would recall that, as I indicated, the penalties are expressed in their maximum and there is a discretion in terms of the scale from one (1) but you cannot exceed what is there. Just to be clear, it is just that personation is seen as a lesser offence.

**Madam CHAIRMAN:** Okay. That brings us to the end of Part VI and we are moving on to Part VII: Miscellaneous. Clause 64: Exemption from Duties and Taxes.

Clause 65: Regulations: "The Minister may make Regulations generally for the purposes of giving effect to this Act."

My only question there is why "may" and not "shall" since we know that the proper functioning of this Bill.

**Ms. SHAWN RAINE BELLE:** If you impose "shall" in this context, it means that the Minister would have to make Regulations if when it is not necessary which is not the intent but you give the Minister the discretion to make the Regulations and it is a formulation that is used in drafting all over the world, so it is not something...

**Madam CHAIRMAN:** So it is just a formulation but we understand that the Minister needs to ensure that Regulations follow with these.

**Ms. SHAWN RAINE BELLE:** Yes, that is even contemplated, Madam Chairman, in relation to the repeals and savings, for instance, in Section 68, Clause 2. There is a preservation of the Child Care Board's Regulations and the Child Care Board's and the Child Care Board's **Private Jail Care Centres Regulations** shall remain enforced as if made under this Act insofar as there are not consistent until revoked by any Regulation made under this Act. You put this in contemplation because the fact of the matter is, there is an intervening period between when you then proclaim and then when you need the Regulations to be in place that you do not want a gap to be there, so you have a hold over or a saving or preservation, until such times as you get the Regulations in place. From that perspective, you can see that there is a contemplation and an understanding that there has to be revisiting of the areas including the making of regulations.

**Madam CHAIRMAN:** Thanks for the clarification, Ms. Belle. Clause 66: Amendment of Schedule.

Clause 67: Savings and transitional, what is this about?

**Ms. SHAWN RAINE BELLE:** Yes, Madam Chairman, if we go to Clause 68, where we are repealing the Child Care Board Act. This is in anticipation of the fact that the Child Protection Authority will take over in relation to child protection; which means that we have to make provision for the transition from the Child Care Board to Child Protection Authority but we want to be able to preserve their privileges; duties and obligations; assets and everything. You make sure there is a transition of all of those obligations to this new entity and that there is no gap. Even with legal obligations – like if there was a case pending – then it would be understood that upon commencement of this legislation, the Child Protection Authority would still be bound in the same way the Child

Care Board would have been.

**Madam CHAIRMAN:** Okay, so moving on, I do not hear any comments on Clause 67. Members of the Committee, we are making good progress down to the end of our review of this Bill. We are moving onto Clause 68: Repeal and savings.

**Ms. SHAWN RAINE BELLE:** Madam Chairman, there is an error in Clause 68(1)(b) so it is supposed to be "the prevention of cruelty to children, CAP, 145."

**Madam CHAIRMAN:** Okay, one (1) correction at (1)(b). Clause 68(2). Clause 69. Clause 70. Moving on to the First Schedule of the Bill:

- Clause one (1): Constitution and Procedure of the Child Protection Board.
- Clause two (2): Temporary Appointment of Board.
- Clause three (3): Tenure.
- Clause four (4): Resignation of Chairman and Deputy Chairman.

**Ms. SHAWN RAINE BELLE:** Madam Chairman, just to say in the shoulder note of Clause two (2), that should be temporary appointment of not the board itself but the member because in the context we are talking about appointing a person to act temporarily. It can be shortened to Temporary Appointment.

**Madam CHAIRMAN:** Okay, we were at:

- Clause five (5): Resignation of Director
- Clause six (6): Automatic Termination of Membership
- Clause seven (7): Revocation of Membership
- Clause eight (8): Notice in Official Gazette
- Clause nine (9): Seal
- Clause 10: Meetings
- Clause 11: Special Meetings
- Clause 12: Presiding at Meetings
- Clause 13: Quorum
- Clause 14: Decisions
- Clause 15: Minutes
- Clause 16: Attendance of Non-Members at Meetings
- Clause 17: Appointment of Committees
- Clause 18: Remuneration
- Clause 19: Validity of Decisions of the Board.

**Madam CHAIRMAN:** I hear no comments so we move on to the Second Schedule: Consequential Amendments.

- Clause one (1): The Adoption Act, CAP 212
- Clause two (2): The Education Act, CAP 41

**Ms. SHAWN RAINE BELLE:** Madam Chairman, just to say that this particular Schedule would be amended to include an amendment to the Community Legal Services Act, CAP 112A; to insert a provision to deal with legal aid applying to proceedings under the child protection legislation, which will be crafted by the CPC.

**Madam CHAIRMAN:** Okay, continuing under Consequential Amendments:

- Clause three (3): Public Finance Management Act
- Clause four (4): Statutory Boards Pensions Act, CAP 384.

Page 72 relates to when the Bill comes in this Chamber before another group of people and in the Lower House. That concludes our examination of the Child Protection Bill with those specific areas we have identified that we need to come back on for definitions and so on and with the understanding that amendments would be made as we have discussed. I need to entertain a Motion for the adjournment of this session, unless there is any other business for today.

**Senator J. A. KING:** Madam Chairman, I do not know if I would call it any other business, I feel as if I missed something today. In terms of the child care centres and we talked about the protection of the wards inside of the centres itself; we talked about corporal punishment and things like that. You made a point when you said it refers back to the information. I cannot remember but what I am trying to say is that I have not seen anything and I could have totally missed it, but I have not seen anything that deals specifically with the protection of information; especially when you have people working with children; you have access to that information. I just want you to help me on that. It felt like I missed something.

**Ms. SHAWN RAINE BELLE:** Madam Chairman, just to say that we have a Data Protection Act that would impose on data controllers and data processors of which the Government is one. There is an obligation to protect the personal information of people and it would include the child. It has application throughout the Statute book, so it is to be read in.

**Senator J. A. KING:** Okay.

**Madam CHAIRMAN:** Before we conclude our examination, I was a little previous of the Child Protection Bill. I would wish to recall our attention to the fact that as a Committee, we had called upon the Barbados Council for the Disabled to indicate specifically where they would see some amendments along the lines that they had suggested in their original piece of correspondence to us. The Barbados Council for the Disabled wrote to indicate that the Council does not have any issues with the two (2) Bills as they addressed all areas of the child's rights to access

services and justice.

*"The major issue we have and had for years is the noticeable categorising of children with disabilities within a context of children.*

*Awareness is key. The Council understands and does not expect that a Bill would specify defined target groups. Every group would want to be named. However, the case of not being clearly defined began way back with the United Nations, when the Council was advocating locally and internationally for the Treaty on the Rights of Persons with Disabilities.*

*Oftentimes, the tone of the day was to generalise the service recipients within policy development and as a result many service providers failed to recognise the special needs and reasonable accommodation required for persons with disabilities.*

*From our experience, this has caused numerous inadequate service delivery to some of these specific needs causing additional trauma and financial challenges to all concerned.*

*We strongly recommend wherever possible, when identifying "child" in the Bills that you add "includes/including child with a disability". This is futuristic planning as we have recognised that past planners never factored in the environmental and non-communicable diseases that have given rise to so many disabilities.*

*With due respect to your work, I hope this submission is taken into consideration."*

What this would require, would be for an assessment to be done of wherever we see "child"; whether it is useful to include "includes/including child with a disability". If the Committee feels that it is not in a position to comment at this time, I would propose that we take this up as the first item on the agenda for Friday before going through the Clauses to the Child Justice Bill.

**Senator Rev. Canon Dr. J. A. ROGERS:** I understand the call here but I am wondering if we could not put in a definition for child including children with a disability rather than putting it throughout the Bill. I do not know. Let me leave it to the drafter.

**Ms. SHAWN RAINE BELLE:** Madam Chairman, just to say that the term child would include child with a disability. The issue then becomes when you get into the specifics of how things are run. For instance, in the Child Justice Bill, you would find that there are provisions that contemplate disabilities in terms of accommodation and so on. Care and protection does not specifically do that but it is a situation where you would have to do a combing or scrubbing of the two (2) pieces of Legislation. Where there is in context a requirement to speak to children with a disability, we should make the effort to do so.

I will also point out that it should be remembered that there will be regulations as well. Those regulations can also be used to articulate specific requirements in terms of regulations to further flesh out the provisions that are in the two (2) pieces of Legislation before us. Thank you.

**Madam CHAIRMAN:** In summary.

**Ms. SHAWN RAINE BELLE:** We conduct a review to see where the Legislation contemplates specific reference to children with disabilities but also to flag that the further expansion on that subject can be done in the regulations.

**Madam CHAIRMAN:** That is as opposed to seeking at this stage to amend the definition of the child.

**Ms. SHAWN RAINE BELLE:** Yes Madam Chairman, since child...

**Madam CHAIRMAN:** ...embraces all persons under the age of 18.

**Ms. SHAWN RAINE BELLE:** Yes, Madam Chairman.

**Madam CHAIRMAN:** Thank you for that explanation. Against that backdrop, would the Committee still wish to go through it or would we seek to have it clarified in the regulations and that will be our recommendation?

**Senator J. A. KING:** I would agree with having it clarified in the regulations.

**Madam CHAIRMAN:** That would be the Committee's recommendation.

#### **ADJOURNMENT**

Thank you Members of the Joint Select Committee. Thanks also to you the members of staff. I think that we had a good and useful session today. There is no dinner, so wherever you go that you call home or wherever else you may be going get there safely. See you at 10:00 a.m. Friday, as we reconvene to examine the Child Justice Bill, thank you. Motion to adjourn the meeting.

**Senator J. A. KING:** Motion to adjourn meeting until Friday, 06 October at 10:00 a.m. in the morning.

**Senator Rev. Canon Dr. J. A. ROGERS:** I beg to second that.

*The motion was resolved in the affirmative without division and the meeting was adjourned accordingly.*

**SIXTH MEETING OF THE JOINT SELECT COMMITTEE (STANDING)  
ON SOCIAL SECTOR AND THE ENVIRONMENT  
ON THE  
CHILD PROTECTION AND CHILD JUSTICE BILLS, 2023  
HELD IN THE SENATE CHAMBER, PARLIAMENT BUILDINGS  
TRAFALGAR STREET, BRIDGETOWN**

**FRIDAY, OCTOBER 06, 2023**

**FIRST SESSION 2022-2027**

**IN ATTENDANCE**

**Ms. TONI N. S-A. MOORE, J.P., M.P. (Chairman)**  
**Senator JOHN A. KING, B.S.S. (Deputy Chairman)**  
**Miss CYNTHIA Y. FORDE, J.P., M.P.**  
**Hon. COREY A. LANE, J.P., M.P. (online)**  
**Senator Rev. Canon Dr. JOHN A. ROGERS, B.Sc.,  
B.A. (Hons), M.Phil., D.Th. (online)**

**ABSENT:**

**Mr. T. A. PRESCOD J. P., M. P.**  
**Senator Dr. the Hon. CHELSTON W. DaC.  
BRATHWAITE, CHB, Ph.D.**

**ALSO IN ATTENDANCE:**

**Ms. Beverley S. GIBBONS (Deputy Clerk of Parliament)**  
**Mr. Nigel R. JONES (Deputy Clerk of Parliament)**  
**Ms. Shawn Raine BELLE (Chief Parliamentary Counsel  
(Ag.))**  
**Miss J'anne C. GREENIDGE, (Typist) (Journal  
Department)**

*The Chairman called the meeting to order at 10:54 a.m.*

**MADAM CHAIRMAN:** We can still accomplish what we intended for today and that is to complete an examination of the Child Justice Bill following our review of the written submissions and oral presentations that came before this Committee. I want us to get into the Agenda. I would wish to entertain a motion for the deferral of Minutes held three days ago on Tuesday, 03 October, 2023.

**MINUTES**

*On the motion of the SENATOR J. A. KING, Deputy Chairman; seconded by Hon. C. LANE, J.P., M.P., the minutes of the meeting of 03 October, 2023, were deferred.*

**MADAM CHAIRMAN:** With that out of the way we can

commence our examination of the Child Justice Bill. You will recall we have completed our examination of the Child Protection Bill. We had given some leeway for the Bar Association to be able to submit in writing any pressing concerns that that Association had with the Child Justice Bill. To date, and up to this point in time, we have received none, so our clause-by-clause examination will commence minus any further submissions for our consideration. I would wish for us to look at the Title of the Bill, which reads as follows:

*"This Bill will make provision for (a) the reform of the criminal law applicable to children and (b) the repeal of the Juvenile Offenders Act, CAP 138 and Reformatory and Industrial Schools Act, CAP 169."*

Are there any comments? I hear none. We can move past the Short Title, so this Act may be cited as the Child Justice Act, 2023.

Clause two (2): Interpretation. Are there any changes to definitions?

Clause three (3): Purpose. With no changes being proposed; we can move on to Part II: Application and Criminal Responsibility.

Clause 4: Application of Act, has two sub-clauses. I recognise no comments.

Clause 5: Age of Criminal Responsibility. That is a brief one.

Clause 6: Principles to be applied when dealing with children. That brings us to the end of Part II. Moving on to Part III: Assessment of a Child.

Clause 7: Apprehension.

Clause 8: Assessment.

Clause 9: Persons to attend assessment.

Clause 10: Powers and duties of probation officer prior to assessment.

Clause 11: Powers and duties of the probation at assessment. Receiving no amendments or comments, that brings us to the end of our examination of Part III.

On to Part IV: Securing Attendance of a Child at the Initial

Inquiry.

Clause 12: Methods of securing attendance of a child at initial inquiry.

Clause 13: Summons.

Clause 14: Written notice.

Clause 15: Uncertainty as to age of person.

Clause 16: Release of child into care of the parent or the appropriate adult before the initial inquiry.

Clause 17: Director of Public Prosecutions may authorise the release of a child.

Clause 18: Duty of police officer and person into whose care a child is released.

Clause 19: Release of child on recognisance prior to initial inquiry.

Clause 20: Child accused of certain offences not to be released from detention.

Clause 21: Detention in a secure residential facility.

Clause 22: Death, injury or illness of a child in police custody. That is a change that needs to go there because it reads "in policy custody" which should be "in police custody".

Clause 23: Register of children waiting to attend an initial inquiry. This brings us to our conclusion of examination of Part IV.

Moving on to Part V: Initial Inquiry and Diversion.

Clause 24: The Nature and Objectives of an initial inquiry.

Clause 25: Persons to attend an initial inquiry.

Clause 26: Procedure relating to an initial inquiry. You would recall at this stage we had significant discussion on the process of diversion and to address the concern of whether or not the process fairly would achieve all that it sets out to.

I think we had agreed that as it relates to the whole process of diversion, we would refer that for a policy decision. That is to be flagged to the parent Ministry which is the Ministry of Home Affairs, to advise whether specifically the child appearing before a magistrate is something that it would revisit and amend; following all of the discussions around the issue.

Clause 27: Powers and duties of a magistrate with respect to an initial inquiry.

Clause 28: Failure to appear at an initial inquiry.

Clause 29: Release of child into care of parent or appropriate adult. I recognise that Senator Rogers has joined us. Welcome.

**Senator Rev. Canon Dr. J. A. ROGERS:** Good morning, thank you.

**Madam CHAIRMAN:** Clause 29: Release of child into care of parent or appropriate adult. This one has several sub-clauses.

Clause 30: Detention of child after first appearance before a magistrate.

Clause 31: Postponement of an initial inquiry.

Clause 32: Postponement of initial inquiry for a

more detailed assessment.

Clause 33: Decision regarding diversion.

Clause 34: Outlines the purposes of diversion. It is to be highlighted here that our discussions brought us to focus careful attention on (g) and (h) of that Clause; where the aim is to prevent stigmatising the child and the adverse consequences flowing from being subject to the criminal justice system. I think that too will inform any further decisions coming out of the parent Ministry, whether that object is achieved.

Clause 35: Child to be considered for diversion under certain circumstances.

Clause 36: Examines levels of diversion options.

Clause 37: Minimum standards applicable to diversion and diversion options.

Clause 38: Failure to comply with diversion direction.

Clause 39: Development of diversion options.

Clause 40: Protection proceedings.

Clause 41: Referral of a matter for trial and detention pending trial. With no intervention, that brings us to the end of Part V and we move on to Part VI: Court Proceedings.

Clause 42: Conduct of proceedings relating to child in Court.

**Ms. SHAWN RAINE BELLE:** Madam Chairman, just to say that the bold will be removed in the ending of the Clause. You can see at the end of Clause 42(1) is in bold but it should not be in bold.

**Madam CHAIRMAN:** Thank you. Clause 43: Treatment of a child in Court.

Clause 44: Criminal responsibility.

Clause 45: Separation and joinder of trials involving child and adult.

Clause 46: Time limits relating to conclusion of trials.

Clause 47: Court may divert matter.

Clause 48: Privacy and confidentiality.

Clause 49: Prohibition of the publication of certain matters. This brings us to the end of Part VI.

Part VII: Sentencing of a Child.

Clause 50: Child to be sentenced in accordance with this Part.

Clause 51: Pre-sentence reports.

Clause 52: Purposes of sentencing.

Clause 53: Community based sentences.

Clause 54: Restorative justice sentences.

Clause 55: Family group conference.

Clause 56: Sentences involving correctional supervision.

Clause 57: Sentence with a compulsory residential requirement.



Clause 58: Referral to secure residential facility. Clause 59: Referral to prison.

Clause 60: Postponement or suspension of passing sentence.

Clause 61: Penalty in lieu of fine or imprisonment. Clause 62: Prohibition on certain forms of punishment. Clause 63: Notice to parent of child.

Clause 64: Proceedings to show cause.

Clause 65: Child to be provided with legal representation. Would the same discussion that we had with the Bar Association...?

**Ms. SHAWN RAINE BELLE:** Madam Chairman, in this case, the Community Legal Services Act was in fact amended and it is shown in the Sixth Schedule to do consequential amendments to ensure that where an attorney-at-law is retained, their expenses will be covered.

**Madam CHAIRMAN:** Thank you. Clause 66: Requirements to be complied with by attorney-at-law. This is the end of Part VIII: Legal Representation. Part IX: General provisions as to proceedings in court.

Clause 67: Extension of power to take depositions.

Clause 68: Secure Residential Facility.

Clause 69: Designation of a secure residential facility.

**Ms. SHAWN RAINE BELLE:** Madam Chairman, we had indicated in Clause 68 (a) (4) to change the reference to the "term of imprisonment" in that subparagraph to "detention".

**Madam CHAIRMAN:** Alright.

**Ms. SHAWN RAINE BELLE:** Thank you.

**Madam CHAIRMAN:** I am just thinking that if we want to replace the "term of imprisonment" with "detention", at a previous section where it states "child to be sent to prison..."

**Ms. SHAWN RAINE BELLE:** In that case, the terminology would be correct.

**Madam CHAIRMAN:** Okay. Clause 69: Designation of a secure residential facility.

Clause 70: Designation of the Government Industrial School (GIS) as a secure residential facility.

Clause 71: Detention of a child.

Clause 72: Child Justice Board.

Clause 73: Functions of the Child Justice Board.

Clause 74: Appointment of a Director.

Clause 75: Staff.

Clause 76: Status of certain officers of a secure residential facility.

Clause 77: Maintenance of records.

Clause 78: Establishment of secure residential facility programmes.

Clause 79: Medical or Psychiatric Treatment.

Clause 80: Transfer of a child to another secure residential facility.

Clause 81: Emergency.

Clause 82: Notification of death, injury or serious illness.

Clause 83: Resources of the secure residential facility.

Clause 84: Responsibilities of a child in custody.

Clause 85: Infractions.

Clause 86: Misconduct.

Clause 87: Power of the Director to impose discipline on a child in a secure residential facility.

Clause 88: Searches.

**Ms. SHAWN RAINE BELLE:** Madam Chairman, in relation to Clause 87 (1), just remember the part about "corporal punishment, severe or frightening measures"; there should be a definition of "severe or frightening measures". That would have to be done in Clause two (2). Thank you, Madam Chairman.

**Madam CHAIRMAN:** Definition of "severe or frightening measures" to be included under Interpretation at Clause two (2).

**Ms. SHAWN RAINE BELLE:** Yes, Madam Chairman.

**Madam CHAIRMAN:** Clause 88; Searches.

Clause 89: Maintenance of order in secure residential facility.

Clause 90: Grievance Procedures.

Clause 91: Discharge of child from a secure residential facility.

Clause 92: Discharge approval by Minister.

**Ms. SHAWN RAINE BELLE:** Madam Chairman, at this point there was a discussion as to whether it should be that the Minister should consult with the Director and also whether there should be a breakdown of the reasons at this point, why the Minister should have this type of power so if it for compassionate reasons or otherwise. I also have a note that the policy should be sought on this matter from the parents. Thank you.

**Senator Rev. Canon. Dr. J. A. ROGERS:** Excuse me, Madam Chairman, in Clause 92, who is writing to the Minister?

**Ms. SHAWN RAINE BELLE:** Madam Chairman, it would be a parent or appropriate adult or the representative that would be writing on behalf of the child to the Minister in relation to the particular discharge.

**Hon. C. A. LANE:** Madam Chairman, if I may...

**Madam CHAIRMAN:** You may.

**Hon. C. A. LANE:** Thank you. In addition to that, what I have observed as he said for the discharge...

**Madam CHAIRMAN:** Not hearing you clearly.

**Hon. C. A. LANE:** Let me make sure we can fix that. Can you hear me better?

**Madam CHAIRMAN:** Yes.

**Hon. C. A. LANE:** Would it be a case in terms of, and I would like to hear Senator John King on this one, for the actual discharge; would it be Principal/Director to the Permanent Secretary to the Minister? For discharge?

**Ms. SHAWN RAINE BELLE:** Yes, in Clause 92, what

would have to happen is that there would be an application made to the Minister in writing. It does not identify the person but in the circumstances it would usually be the parent or an appropriate adult or the representative who would be making that application on behalf of the child.

**Madam CHAIRMAN:** I am recalling our discussion around whether or not the Minister should want to assume that kind of responsibility; without reflection in the law that the Minister must receive the appropriate advice.

**Ms. SHAWN RAINE BELLE:** Yes, Madam Chairman, in the original discussion relating to it, the advice was given that this really would not usually appear but there was a specific request with specification for a certain type of restriction. The restriction was inserted where the child has served two thirds of his sentence or term of order or custodial portion of the sentence; made by a Magistrate or a judge. On reflection, and where these types of provisions are included; these are really supposed to facilitate largely compassionate reasons. Say for instance, that the child is sick or there is an illness in the family where you anticipate that there may be a death or something like that or there is a death. These are the types of reasons why you would entertain an application like this, that would be extraordinary.

As I said, the policy direction needs to be sought from the parent Ministry in relation to the full articulation. While getting direction on the full articulation of how this would work; it would have to be that you have to identify the parties that can make the application. The fact that the Minister must seek or consult with the Director and then the reasons for such an intervention, whether compassionate or otherwise but the thing is that we would have to get into what the reasons are and that may need further policy direction. Thank you.

**Madam CHAIRMAN:** Alright, this one is being referred to the Ministry of Home Affairs for policy guidance in response to the concerns raised by the Committee that I) it should be clearly expressed that the Minister should be consulting with the Director; the reasons to be outlined and the parties who can make an application should be clarified. If that is it, we have come to the end of Part X.

Part XI: Reintegration.

Clause 94: Establishment of Reintegration Board.

Clause 95: Functions of the Reintegration Board.

Clause 96: Remuneration of the Members of the Reintegration Board.

Clause 97: Staff.

Clause 98: Expenses.

Clause 99: Confidentiality. We did not discuss whether this should have a higher penalty.

*Asides*

**Madam CHAIRMAN:** Clause 100: Protection of Members of the Reintegration Board.

Clause 101: Eligibility for Grant of Reintegration Order.

Clause 102: Application for Order.

Clause 103: Grant for the Reintegration Order.

Clause 104: The Reintegration Order.

Clause 105: Revocation or Suspension of Reintegration Order.

Clause 106: Forfeiture of Reintegration.

Clause 107: Reapplication.

Clause 108: Reintegration Continuing Education Order.

We are now moving on to Part XII: Miscellaneous.

Clause 109: Regulations.

*"The Minister may make regulations generally to give effect to this Act."*

Clause 110: Amendment of Schedules.

Clause 111: Transitional.

Clause 112: Consequential Amendments.

Clause 113: Repeal.

Clause 114: Commencement.

We can move on to the Schedules.

The First Schedule: where we have the list of offences. There are seven (7) offences identified.

The Second Schedule continues the offences.

The Third Schedule and as we go on, we are getting a bit more serious.

**Ms. SHAWN RAINE BELLE:** The Third Schedule will be more serious.

**Madam CHAIRMAN:** Yes, the Third Schedule is the most serious: murder; manslaughter; indictable offences; *et cetera*.

The Fourth Schedule.

Clause one (1): Constitution of Child Justice Board.

Clause two (2): Tenure (of the Child Justice Board).

Clause three (3): Resignation of a member of the Child Justice Board.

Clause four (4): Resignation of the Chairman of the Child Justice Board.

Clause five (5): Publication in Official Gazette.

Clause six (6): First meeting.

It says though at Clause six (6) that the first meeting of the Child Justice Board shall be held at one of the secure residential facilities not later than a month after all members of the Board have been appointed. What happens if a first meeting is not held within that timeframe? Is it that the Board is dissolved or whatever term it would be for a Board that has not started to function? I am just wondering what is the significance of that, if there is nothing else that binds it, really.

**Ms. SHAWN RAINE BELLE:** Madam Chairman, this is a holdover from the Reformatory Schools Legislation; that is basically why it is there. It is kind of like a holdover but the reasoning, I do not know what informed it at the time. It does not have any sanctions, so it may be that it is best to take it out.

**Madam CHAIRMAN:** I think so because then it creates

the opportunity for somebody to argue, the Board did not meet so the Board should not be there, kind of thing.

**Ms. SHAWN RAINE BELLE:** Madam Chairman, noted. This would cause the consequential change of renumbering.

Thank you!

**Madam CHAIRMAN:** So Clause seven (7) would be the new Clause six (6): Secretary.

Clause eight (8) becomes seven (7): Quorum.

Clause nine (9) becomes eight (8): Meetings.

Clause 10 becomes nine (9): Minutes.

Clause 11 becomes 10: Visits to Secure Residential Facilities.

The Fifth Schedule: Constitution of Reintegration Board.

Clause one (1): Outlines the constitution ...

**Ms. SHAWN RAINE BELLE:** Basically the composition of the Members and the fact that the President, on recommendation of the Minister, appoints the Members of the Board.

**Madam CHAIRMAN:** Clause two (2): Tenure.

Clause three (3): Resignation.

Clause four (4): Publication in Official Gazette.

Clause five (5): Meetings.

Clause six (6): Quorum.

Clause seven (7): Minutes.

It is interesting that the Minutes for the Reintegration Board will be submitted as soon as possible after while the Minutes for the Child Justice Board must be submitted within two weeks. Was there a special consideration for that?

**Ms. SHAWN RAINE BELLE:** Yes, Madam Chairman. The Reintegration Board in terms of its jurisdiction, has to do with the early release of a child who would have been detained; there should be as much expedition in relation to time, relating to this particular matter and that is why it is structured in this way.

**Senator J. A. KING:** I still feel like there should be a specific time because if you leave it open-ended like this. I am still thinking that there should be at least some timeline put down because with matters like these, yes, there has to be a lot more investigation and different things that they need to do but I still feel, with it being open-ended; it leaves it up in the air as to when this thing can be done. It should have some timeline whether it is a month; two months or whatever, I believe there should be something there.

**Ms. SHAWN RAINE BELLE:** Madam Chairman, we can tie it in the same way as the Child Justice Board with the two-week timeline, so it can be redrafted that way. It is just to remember that with proceedings involving children; things should be resolved as soon as possible. At least the two-week timeline would give the sphere for operation.

**Madam CHAIRMAN:** Can we move on to the Sixth Schedule which outlines the Consequential Amendments?

We have nine (9) Consequential Amendments.

**Ms. SHAWN RAINE BELLE:** Madam Chairman, it is the amendment of nine (9) enactments and the consequential amendments therein. This, of course, would have been the Schedule which I would have been referring to in order to enable the Child Justice Act; when enacted, to operate efficiently.

**MADAM CHAIRMAN:** That brings us to the end of our examination of the Child Justice Bill, 2023, clause by clause. To Agenda Item no. four (4), Any Other Business, where I think it would be necessary for us to understand the next steps which will include all of the discussions being very carefully compiled into a Report that we hope can be available by the end of the month. By Tuesday, 31 October, 2023; so the hard work continues.

In the interim, there are some exchanges that would have to be made with the respective parent Ministries to advise them of those policy directives that would be needed to inform the Chief Parliamentary Counsel (CPC) because the Committee recommends but the follow-through would have to be by the respective Ministries to advise the CPC of the changes, once approved, that should be included.

We look forward to the Bills coming before the respective Chambers again for further examination; at which time we know that all Members of the Committee would then be in better shape to tackle them on the Floor when that moment comes.

I also would wish to thank Members of the Committee for being very focused and steadfast. These pieces of legislation are important. They have been widely discussed; ventilated publicly and we are satisfied that sufficient opportunity has been provided for members of the public to weigh in beyond the call-in programmes and the different talk shows and to present before this Committee. To the extent that we have received 10 written submissions and have entertained five (5) oral presentations – most of those having to do with the Child Protection Bill – we still can be satisfied that members of the public had sufficient time for full ventilation and review of the pieces before us.

I also wish to say a special thanks to our representative from the CPC for being very patient with this Committee, initially and throughout, to ensure that we got it. Part of our important role will be to make sure that our colleagues as well and the wider public can understand some of the very technical and nuanced issues as well as laymen would be able to represent it.

To the staff as well, whose work continues to make sure that we are as faithful to that 31 October, 2023 timeline as we have been to all of the timelines up to now. Again, everybody, thank you. That is it from me. If there is any other Member of the Committee who wishes to add an Item under Any Other Business, it is now open to you. Seeing no indications to take the Floor; we can entertain a motion for the adjournment of the meeting.

---

**ADJOURNMENT**

*On the Motion of SENATOR J. A. KING, Deputy Chairman, seconded by Hon. COREY LANE, the meeting was adjourned without a set date.*

**MADAM CHAIRMAN:** Thank you. God bless everybody. Have a good day and a beautiful weekend.

**Senator Rev. Dr. JOHN ROGERS:** Thank you very much, everyone and best wishes for the weekend. I really enjoyed this process. Thank you very much.

**Miss C. Y. FORDE:** Thank you all as well. God bless you. Goodbye.

**SEVENTH MEETING OF THE JOINT SELECT COMMITTEE (STANDING)  
ON SOCIAL SECTOR AND THE ENVIRONMENT  
ON THE  
CHILD PROTECTION AND CHILD JUSTICE BILLS, 2023  
HELD IN THE SENATE CHAMBER, PARLIAMENT BUILDINGS  
TRAFALGAR STREET, BRIDGETOWN**

**FRIDAY, FEBRUARY 16, 2024**

**FIRST SESSION 2022-2027**

**IN ATTENDANCE:**

**Ms. TONI N. S-A. MOORE, J.P., M.P. (Chairman)**  
**Senator JOHN A. KING, B.S.S. (Deputy Chairman)**  
**Her Honour CYNTHIA Y. FORDE, J.P., M.P.**  
**Hon. COREY A. LANE, J.P., M.P. (online)**

**ABSENT:**

**Mr. T. A. PRESCOD J. P., M. P.**  
**Senator Rev. Canon Dr. JOHN A. ROGERS, B.Sc.,  
B.A. (Hons), M.Phil., D.Th.**

**ALSO IN ATTENDANCE:**

**Hon. Kirk D. M. Humphrey, M.P. (Minister of People  
Empowerment and Elder Affairs)**  
**Ms. Beverley S. GIBBONS (Deputy Clerk of Parliament)**  
**Ms. Shawn Raine BELLE (Chief Parliamentary Counsel  
(Ag.))**  
**Miss J'anne C. GREENIDGE, (Typist) (Journal  
Department)**

*The Chairman called the meeting to order at 11:15 a.m.*

**Madam CHAIRMAN:** We have before us the agenda, which we will begin with the confirmation of minutes. Since I imagine that we are coming down to the end of these meetings, I think it will be useful for us to have to go through them since we might not be able to defer them much past this session, or we can do it for the next one, so I am in your hands. Clerk, which do you prefer?

**Madam Deputy CLERK:** You can defer them in order to let the Members have time to read through them.

**Madam CHAIRMAN:** Do them at the last session?

**Madam Deputy CLERK:** Yes.

**Madam CHAIRMAN:** Okay. I want to also acknowledge the Honourable Corey Lane online who is with us, and who asked not to have to use his camera on this occasion.

We go straight into the consideration of the

amendments. The proposal is that we start with the Child Protection Bill, and we have before us the Bill and the amendments. At this time, I will turn over to Ms. Belle so that she can walk us through the amendments one by one.

**Ms. SHAWN RAINE BELLE:** Good morning Madam Chair. Good morning to everyone. I just want to start with indicating that the Child Protection Bill would have received a 'year update', so that all the references therein would refer to the year 2024 in relation to the long title.

**Madam CHAIRMAN:** I am interrupting only because after each amendment I have to make sure that we pass it, so that we do not have to go back to it at the end.

**Ms. SHAWN RAINE BELLE:** I am guided.

**Madam CHAIRMAN:** The first amendment is an update to change the year to 2024. Is this approved?

**Hon. K. D. M. HUMPHREY:** Yes it is.

**Madam CHAIRMAN:** Continue.

**Ms. SHAWN RAINE BELLE:** In relation to the "Objects and Reasons" that also operate to inform the long title, the "Objects and Reasons" have been amended to read as follows: "This Bill makes provision for the reform of the law in relation to a child who is in need of care and protection." The long title was amended as follows, "An Act to make provision for the reform of the law in relation to a child who is in need of care and protection."

**Madam CHAIRMAN:** Is this approved?

*The question was asked and resolved in the affirmative without division.*

**Ms. SHAWN RAINE BELLE:** Madam Chair, just to clarify that the recommended change from "Child Care Centre" to "Child Protection Facility" was not approved by the pilot Ministry and in fact it would constitute a conflict if there was such a change, so that the term "Child Care Centre" remains in the Bill.

**Madam CHAIRMAN:** I do not quite understand. I do not have an issue with it, but I just wanted to know why it would be a conflict of interest. That part was not clear to me, so I just want to understand.

**Ms. SHAWN RAINE BELLE:** I will just refer to documentation that would have come from the Ministry of People Empowerment and Elder Affairs. They determined in the meeting on the matter that the change of 'Child Care Centres' to 'Child Protection Facilities', would constitute a conflict with regard to the likely retention of Day Care Centres for children aged 0-3 years, notwithstanding the provision within the Second Schedule under 'Day Nurseries'. As it stands, the proper reading of Clause 53 that empowers the Minister to grant approval for "Child Care Centres", the term accommodates both the concept of a Child Care Centre and a Child Care Facility. Therefore, that broader terminology would be preferable to the Ministry. Thank you.

**Hon. K. D. M. HUMPHREY:** Thank you Madam Chair. The Cabinet had approved at some point the moving of the day care nurseries to the Ministry of Education. That was to be done by proclamation. Even within this Bill we were saying, 'at some point in time'. The Ministry of Education is not quite ready for that, and neither is the Child Care Board. Therefore, we believe that for a certain amount of time, we will still have to manage the day nurseries. They are not Child Protection Centres, they are centres for children, but they are not Child Protection Centres. Hence, while we have responsibility for the day nurseries it would be difficult to call them Child Protection Centres.

**Ms. SHAWN RAINE BELLE:** Thank you Madam Chairman. Thank you, Minister. In relation to the definition of "financial abuse", it was found that we did not need to deal with that in the way that was requested, so that the term remains. In relation to the definition of "physical abuse", that term was amended to delete the words "or omission". The definition of the term "verbal abuse" was amended to delete the word "silence". The CPC (Office of the Chief Parliamentary Counsel) and the Ministry agreed that the definition of "non-verbal abuse" would be unnecessary in the circumstances. Thank you.

**Madam CHAIRMAN:** If there are no objections to those definitions, can we approve the changes that have been made?

*The question was put and resolved in the affirmative without division.*

**Ms. SHAWN RAINE BELLE:** Madam Chairman, in Clause 3, that amendment was made to shift compliance with the International Conventions, to paragraph (d). Therefore, if I draw the Committee's attention to the Purpose Provision within that Clause 3 (1) it states as follows:

The purpose of this Act shall be to ensure compliance with:

- a. *the United Nations Convention on the Rights of the Child;*
- b. *the Universal Declaration of Human*

*Rights;*

- c. *the United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules");*

*D provides to ensure compliance with the various Conventions, rather than putting it at A.*

Thank you.

**Madam CHAIRMAN:** As simple as this is, this one was the focus of much debate during the period, so I am begging you (Committee members) not to disagree with it. I beg to move the amendment to the changes in the reordering.

*The question was put and resolved in the affirmative without division.*

**Ms. SHAWN RAINE BELLE:** Madam Chairman, in terms of the request for a timeframe for desertion, that was not approved. In terms of Clause 5 (f), that was amended by deleting the word 'moral'. Before, Clause 5 (f) reads as follows:

*"has been exposed to danger, moral or otherwise;"*

Now, the word 'moral' was deleted. Thank you.

**Madam CHAIRMAN:** All those in favour?

*The question was put and resolved in the affirmative without division.*

**Ms. SHAWN RAINE BELLE:** Clause 5 (1) was amended to delete the reference to "Section 39 of the Child Justice Act" and the words "Section 40 of the Child Justice Act". That should read 2024. Yes, it was updated to 2024, if you look at the draft.

**Madam CHAIRMAN:** Which one?

**Ms. SHAWN RAINE BELLE:** Clause 5 (1).

**Madam CHAIRMAN:** Any dissenting voices? It has been approved, so we can move on.

**Ms. SHAWN RAINE BELLE:** Clause 24 had to do with the various requests for the consideration of the inclusion of "attorney-client privilege" and then, privileges relating to priests and doctors. However, the Ministry was not inclined to include an exemption related to medical practitioners or to priests, particularly against the backdrop that we are dealing with the issue of child abuse. Therefore, those matters were not included in the Bill.

In relation to Clause 29 (6)...

**Madam CHAIRMAN:** Would you mind going back to Clause 7?

**Ms. SHAWN RAINE BELLE:** No problem, Madam Chairman.

**Madam CHAIRMAN:** Sorry, there was no amendment?

**Ms. SHAWN RAINE BELLE:** No amendment.

**Madam CHAIRMAN:** However, we did touch on it. Right?

**Ms. SHAWN RAINE BELLE:** No.

**Madam CHAIRMAN:** Okay. Alright. Therefore, no change there.

**Ms. SHAWN RAINE BELLE:** No.

**Madam CHAIRMAN:** Sorry, continue.

**Ms. SHAWN RAINE BELLE:** Madam Chairman, in relation to Clause 29 (6)

**Madam CHAIRMAN:** Sorry, I know I saw it. At Clause 7, there was an amendment to the First Schedule.

**Ms. SHAWN RAINE BELLE:** I am sorry. Yes. Clause 7. Okay. My apologies, Madam Chairman. This matter had to do with the recommendation that a provision be inserted for an attorney-at-law to be paid by the State in relation to matters of legal aid for child protection proceedings or hearings. Therefore, just to indicate to you that in the Second Schedule to the Child Protection Bill, we have a consequential amendment being made to the Community Legal Services Act Cap. 112A, Part II of the First Schedule which was amended to make provision for an attorney-at-law to be paid by the State where there are proceedings and hearings in relation to a trial.

**Madam CHAIRMAN:** All those in favour?

*The question was put and resolved in the affirmative without division.*

**Ms. SHAWN RAINE BELLE:** Thank you, Madam Chairman. In relation to Clause 29 (6), this is amended as follows:

*"Where a care plan is developed pursuant to subsection (2) (b) that care shall be signed by the parent of the child who is the subject of the care plan".*

Initially, the word 'plan' was missing from the second mention of 'care' in that sentence. Therefore, the word 'plan' was inserted so that it reads "*care plan*", instead of just care.

**Madam CHAIRMAN:** Is this approved? We can continue. It is approved.

**Ms. SHAWN RAINE BELLE:** Thank you, Madam Chairman. In relation to amending the Bill to speak to extreme behaviours. It was not felt by the Ministry that insertion was necessary. The referral to the psychologists in Clause 38 (1), it was also decided that the referral to a psychologist or psychiatrist would be excessive in the circumstances. In any case, the court would be the final arbiter. If it was that there needed to be an expert in the situation, then the Order would facilitate the court making such a directive.

In relation to....

**Madam CHAIRMAN:** Just a minute. Minister, are you ready to defend this one?

**Hon K. D. M. HUMPHREY:** Yes, I am. Based on the conversation with the social workers who practise this daily, they felt very comfortable that they would make the recommendation, if necessary, the court would then rule. However, traditionally, there is a psychologist on staff who is often involved in these matters. They felt that the social workers, as part of their social work assessment, they have the capacity to be able to make a determination.

**Madam CHAIRMAN:** The only reason I asked is because the Ministry really has the capacity and to accept this will be to say that the Ministry does not have the capacity to do this that has been doing it all along. Okay.

**Hon K. D. M. HUMPHREY:** I think also the credibility of social workers....

**Madam CHAIRMAN:** Exactly. Okay. Thanks. Just developing speeches as we....

**Ms. SHAWN RAINE BELLE:** Thank you, Madam Chairman. Just to indicate that Clause 42 and 41 where we are using the terminology 'Custody Care Order', the recommendation is to say a 'Care Order' or something like that because the argument was made, and I think the original suggestion or recommendation was made, that we should try not to mention the word 'custody' because it could be confused with the word 'Custody Order' elsewhere; but it would have been determined that the Bills define Custody Care Order in such a way that it would be understood to be very different from a Custody Order so the terminology Custody Care Order remains. In Clause 53...

**Madam CHAIRMAN:** Suppose there was an argument to include therefore a definition of Custody Care or Custody Care Order.

**Ms. SHAWN RAINE BELLE:** Chair, but this is the point that was being made that the legislation, this legislation, already defines the Order sufficiently to give a distinction from the understanding of what a Custody Order would be in other legislation. So this has a very specific meaning in the context of this Bill.

**Madam CHAIRMAN:** That is understood by all our colleagues? Okay. We are good.

**Ms. SHAWN RAINE BELLE:** Chair, in relation to Clause 53, the Clause was amended to state as follows": "*The Minister may grant approval for Child Care Centres in accordance with such regulations as may be prescribed.*" Originally, it said Child Care Centre or Child Care Service, I believe; and so the word was amended to read Child Care Centre instead.

**Madam CHAIRMAN:** All in favour? Those against? Methinks the Ayes have it.

**Ms. SHAWN RAINE BELLE:** Clause 54 (2) The intervention was made in Sub-section 2 to have it read, "The staff of the approved Child Care Centre and the Director shall assist the child to become reunited with his

parent. This originally was 'Service' and so it was changed to Child Care Centre.

**Madam CHAIRMAN:** All in favour? Those against? Methinks the Ayes have it.

**Ms. SHAWN RAINE BELLE:** Chair, in relation to Clause 59(2) that has been amended to delete the words "severe frightening measures" and the words 'cruel, inhuman or degrading measures' was substituted because the language is recognised in international law and the present Constitution of Barbados.

**Madam CHAIRMAN:** All in favour? Those against? You said the language is consistent with...

**Ms. SHAWN RAINE BELLE:** International Law and our Constitution.

**Madam CHAIRMAN:** Okay. Thank you. Proceed.

**Ms. SHAWN RAINE BELLE:** Chair, in relation to Clause 68 (1b), the reference originally was, to 'the Prevention of Cruelty Act Cap 145'. It has now been changed to the appropriate title which is "Prevention of Cruelty to Children Act Cap 145."

**Madam CHAIRMAN:** All in favour? Those against? Methinks the 'Ayes' have it.

**Ms. SHAWN RAINE BELLE:** Chair in relation to the First Schedule to the Bill in Clause 2, well what is referred to as Clause 2 but really is the shoulder note of the paragraph 2 of the First Schedule to the Child Protection Bill, was amended to delete the words, 'of board' and should now read, 'temporary appointment'.

**Madam CHAIRMAN:** I am trying to actually find it. Clause 2 'temporary appointment of Board' was deleted.

**Ms. SHAWN RAINE BELLE:** And it has been replaced with 'temporary appointment'.

**Madam CHAIRMAN:** All in favour? Those against? Methinks the Ayes have it.

**Ms. SHAWN RAINE BELLE:** Chair, in the Second Schedule to the Child Protection Bill it deals with Consequential Amendments so that in paragraph ... just need to go to the appropriate part of the Bill. So this would be for everyone on Page 70 and you have Item 2 referring to the Community Legal Services Act Cap 112 A. In Part 2 of the First Schedule delete the paragraph A and substitute the following: "Minors or child as defined under the Child Protection Act, 2024". So this enables attorneys to be retained by Legal Aid or Legal Aid to be extended to children who are the subject of proceedings or hearings under the Child Protection legislation.

**Madam CHAIRMAN:** All in favour? Those against? So just for avoidance of doubt during the process we had a number of amendments which we submitted to the relevant ministries for review and the question for the Committee is whether we are satisfied that all of the amendments we discussed have been sent on and have been responded to. We have accepted where amendments have been made. We have not challenged where proposed amendments have been considered not to be appropriate for amending but I just want us to satisfy ourselves that all of the amendments

that were due for consideration have been duly passed on and examined and that we are satisfied therefore that these amendments should be included in the Bill and therefore form part of our final report.

If there is no objection the question therefore to that very long preamble is All in Favour, please say 'Aye' and All Against, please say 'No'. Good. So I think that we have completed our examination of the amendments for the Child Protection Bill so it can proceed then as amended. Okay. It is passed as amended. So then that brings us the Child Justice Bill and we will go through a similar process. Ms. Belle?

**Ms. SHAWN RAINE BELLE:** Chair, just in relation to the Child Justice Bill. The Bill was updated and received a year update so that it will be the Child Justice Bill 2024 and all references have been corrected.

**Madam CHAIRMAN:** All in favour. All against. Methinks the Ayes have it.

**Ms. SHAWN RAINE BELLE:** Chair, in relation to Clause 38 (b) which was amended as follows:

*"A written notice to the parent to have the child appear before child appear before a Magistrate."*

Before it was 'A written notice to the child directly to appear before a Magistrate' so that ...

**Madam CHAIRMAN:** That was out of order.

**Ms. SHAWN RAINE BELLE:** Yes. It was amended to suit.

*The question was put to the Committee and resolved in the affirmative without division.*

**Ms. SHAWN RAINE BELLE:** Madam Chairman, in relation to Clause 42(1), the bold font was removed from the ending which stated: "... *in a manner that can be understood by a child*", that bold font was removed.

**Madam CHAIRMAN:** Okay.

*The question was put to the Committee and resolved in the affirmative without division.*

**Ms. SHAWN RAINE BELLE:** Madam Chairman, in relation to Clause 68(a)(4) which was amended to delete the word "imprisonment" and substitute the word "detention"...

**Madam CHAIRMAN:** Yes, we had some debate on that as well. I think it was the Committee's will.

*The question was put to the Committee and resolved in the affirmative without division.*

**Ms. SHAWN RAINE BELLE:** Madam Chairman, in relation to Clause 87(1), the words "severe or frightening measures" were deleted and replaced with the words "cruel, inhuman or degrading measures" which mirrors the amendment made to the Child Protection Bill, and as



indicated in the analysis there, it was determined that such wording would be in line with the Constitution of Barbados and International Law.

*The question was put to the Committee and resolved in the affirmative without division.*

**Ms. SHAWN RAINE BELLE:** Madam Chairman, in relation to Clause 92 of the Bill, *Discharge Approved by the Minister*, this was redrafted and it now reads as follows: *The Minister may on consultation with the Director approve the discharge of a child from a secure residential facility on the application made to him in writing by an appropriate adult, an attorney-at-law, representing the child or a parent where that child has served two-thirds of his sentence or term or the order or custodial proportion of the sentence made by the Magistrate or Judge.*"

So in this instance it was basically to make sure that the Minister did not have a complete discretion in relation to approving the discharge, but in fact, that it would be in consultation with the Director and also it would be made clear that an application had to be made to him by a specific set of persons.

**Madam CHAIRMAN:** There were two issues with this one, one relating to the Minister having absolute discretion and the one relating to the ambiguity as regards who was, in fact, writing; so we have satisfied both of those.

**Ms. SHAWN RAINE BELLE:** Madam Chairman, paragraph 6 of the Fourth Schedule, referring to the first meeting was deleted, and paragraphs, as a result, were renumbered.

*The question was put to the Committee and resolved in the affirmative without division.*

**Ms. SHAWN RAINE BELLE:** Madam Chairman, under Minutes, Paragraph 7 of the Fifth schedule was amended as follows:

*"(7) The Reintegration Board shall submit the Minutes of the Meeting of the Reintegration Board to the Minister within two weeks after they have been approved by the Reintegration Board. This was done in order to insert a time limit for the submission of Minutes to the Minister by the Reintegration Board."*

**Madam CHAIRMAN:** Right, because the concern was that the Minutes could take forever.

*The question was put to the Committee and resolved in the affirmative without division.*

**Madam CHAIRMAN:** This brings us to the end of the consideration of the amendments before us in this particular Schedule. The question to the Committee is

whether the Committee is satisfied that we have appropriately addressed all the amendments that were raised during our earlier sessions? Then the question further is: Can we accept the entire set of amendments as put to us this morning?

*The question was put to the Committee and resolved in the affirmative without division.*

**Madam CHAIRMAN:** The Bill will thus be passed by the Committee as amended. Since we have made good on time and since we have a little distance before lunch, I would suggest at this point in time, that we just go through the Minutes, knock those out of the way so that the next time a meeting is convened, it would be for the sole purpose of approving the Report which would be passed on to Parliament.

We will take the Minutes. When all of these Minutes are concluded and the transcripts are then approved, once we get these Minutes in, they would be able to deal with them and then, along with the Minutes of today's session and that is what will inform the report. That still is not saying to us, 'when' as in a time-line because like we discussed in the last amendment, we do not want it to be forever because the Honourable Kirk Humphrey, the Honourable Wilfred Abrahams and I are under pressure so it would help us to know how soon.

**MADAM DEPUTY CLERK:** Madam Chairman, I would have to impress on the Hansard reporters in the Reportorial Department to complete the transcripts of this meeting and the upcoming meeting that will follow next week.

**Madam CHAIRMAN:** This meeting is easy.

**MADAM DEPUTY CLERK:** I know it is very easy. So as soon as the transcripts are finished, the Minutes are finished and the draft report has been approved then the Report will be laid in the House of Assembly.

**Madam CHAIRMAN:** So about a week?

**MADAM DEPUTY CLERK:** Yes, about a week after.

**Madam CHAIRMAN:** We are hoping that we can convene on Tuesday. The Minutes of today should be finished by Tuesday because they are fairly straightforward Minutes.

The first set of Minutes before us are the Minutes for September 19, 2023 and these were the Minutes that were deferred on October 4 and so were the Minutes of October 3, the 1<sup>st</sup> and the 6<sup>th</sup> so we have these three sets of Minutes and because all of us are very young in here, I am sure that we will remember well what we were discussing on these dates.

The first set of Minutes, the Minutes of September 19, and go through page by page for each one. The Attendance is Page 1; Page 2 reflects the Call to Order, Minutes and Deferral of Minutes, and then the start of the oral presentations, the first one being that by Dr. Evelyn, certified sociologist. Page 3 continues that exchange with Dr. Evelyn, and I should have said I am taking the Minutes

as read. Page 4. Should I just consider the Minutes as read or should I make sure they are read? Then these go into a report, and because they involve the examination of people and the report will become a public document, maybe we should just defer, and read through these minutes next week and make sure, because you do not want a person challenging something. I totally trust the Hansard team but we know it gets, so I think on reflection, because these Minutes reflect much of the public engagement, we should take the time to read them and ensure that we are good so that when we come, we would not be just taking them as read, they would have been read and we would be able to just proceed through them.

*The question that the Minutes be deferred was put and resolved in the affirmative without division.*

**Madam CHAIRMAN:** We have the Draft Report before us. Are we ready to commence the discussion on it? Okay, good. I am hearing the Deputy Chairman speaking up and saying he is ready. Similarly, we will go through the Draft Report page-by-page. I was somehow shocked when I saw the Report because I know that the **Vending Report** had seemed really long so this is welcomed; it is a short one in comparison. The first page of that is just what we were setting out to do, with Terms of Reference being established on Page 2. Page 3 shows the different meetings that were held and so on. The meeting dates were proposed and then they were amended. Page 4 outlines all of the entities which the Committee felt submissions should come from, which is very useful because we wrote and reached out to a number of these entities. In fact, all of them were written and we ended with the examination of the ones who actually came and participated. Minister Humphrey, this would be very useful for you as well Your Honour Miss Forde, if we have to speak to it when the matter is debated, because there has been much ado over the lack of inclusion but we reached out to all of these people, yet we only had submissions from a few; some who were not even on this list.

Page 5 outlines when we actually started our work and the deadlines and timelines we set when we agreed to the length of the oral submissions and so on, and how written submissions would follow. Page 6 shows at the bottom, the Committee beginning its deliberations where we started with Mr. Hutson Inniss and Mr. Vincent Smith, because in order to refresh our minds we went through all of the submissions and discussed them amongst ourselves before we actually started the debate. This was in preparation for the oral presentations. We received ten of these and the Report outlines what the summary positions were at the Committee level. Page 11 is where we actually started to live-stream the oral presentations, starting with Dr. Veronica Evelyn, and here is where I think that the Committee should want to take time, page-by-page, to go through it.

Dr. Evelyn, who has worked as a consultant

sociologist for the past 19 years, addressed the Committee in relation to the Child Protection Bill. She posited that there was definitely a need to update and reform laws pertaining to the care and protection of children. However, she submitted that the legislation was unacceptable in its present form. She went on to raise a number of concerns. I am just reading; that was just a direct quote for our recorders. She went on to raise concerns on the concept of sexual orientation and gender identity, strongly advising that given the *Charter of Barbados 2021*, she believed that this was now being considered for inclusion in the new Constitution. She urged the relevant authorities to "revisit the Child Protection Bill, re-conceptualise its purpose, review and revise language so that the provisions of the Bill are consistent with an informed, well-reasoned national stance on sexual orientation".

Then we have the Chairman opposing her submission. We do not have Dr. Evelyn coming back in on the Chairman's opposition but I am sure she did, but we do not capture it in this Report. She opposed. For those of us who were there, we would recall – all of us were there – that she stated that "we reject the assertion". I cannot remember exactly what she came back in with but she came another time. She probably repeated herself then, not adding any further substance to it. Okay.

*Asides.*

**Madam CHAIRMAN:** The second entity was the Child Care Board, and Ms. Roseanne Richards presented. Many of these amendments have been discussed this morning; the ones in relation to Child Care Centre versus Child Protection Facilities, desertion ... We should say that coming out of the presentation from Dr. Evelyn, that is where we re-ordered. Hers was one where it caused us to re-order Clause 3. Hence, a lot of the amendments that we discussed under the Child Protection Act would reflect our discussions with the Child Care Board where we sent a number of items for their further consideration and these have been addressed in our amendments.

Page 15, the Barbados Bar Association team. Was that the occasion when they came and had to come back?

**Senator J. A. KING:** Yes.

**Madam CHAIRMAN:** Therefore, the first occasion was when they wanted us to rewrite the Bill. Then at page 18, the Family-Faith-Freedom Barbados Team. That is on page 18 and 19, and nothing jumped out there. Then there was the Democratic Labour Party's submission which continues from page 19 to page 22.

That concluded the oral presentations, because all of the other submissions, as you recall, were in writing only. At page 23 is the examination of the Child Protection Bill -- Objects and Reasons, which we have addressed in the amendments.

Clause 2, "verbal abuse", "custody care order", "physical abuse", "financial abuse", the definitions of these

have been captured here, how we treated to them; and we have reviewed these as well.

On Page 24 regarding the purpose, just going through, we have addressed the concern that the order of the bullets was necessary so that there is no doubt in anybody's line, albeit that there was an "and". There is no doubt in any line that first and foremost above everything else this Bill is to protect children.

We moved on to a child in need of care and protection. We are just going through to make sure it is nothing that jumps out at us that was left out. At participation of a child, we have included Community Legal Services. That was touched on at page 25 of the report.

At Part 3, Interventions, Reports and Investigations, we dealt with Clause 24, mandatory reporting, the whole issue of attorney-client privilege and where we had the long discussion on whether the Clergy and so on should have been exempt.

On page 26, we have addressed the action by the Director. Also, Part 4, Care and Protection Orders, Part 5, Child Care Centres. We also looked at corporal punishment.

On page 27, Part 7, under miscellaneous, repeal and savings. Did we touch on temporary appointments to the Board?

#### *Asides*

**Madam CHAIRMAN:** Yes, I asked a question about that the same time. The Second Schedule (Consequential Amendments) to include Community Legal Services. That is the examination of the Child Protection Bill. Next is the examination of the Child Justice Bill. There are no amendments to the first part. Part 4, Securing Attendance of a Child at Initial Inquiry. On Page 28, we had some discussion on diversion, recommending that the terms be also brought to the attention of the parent Ministry, so that they would be further informed in making their decision. That was done, right?

**Ms. SHAWN BELLE:** Yes, Madam Chair.

**Madam CHAIRMAN:** Part 6, Court Proceedings, Clause 42. Part 8, Secure Residential Facility, Clause 68. Page 29, the power of the Director, we addressed that, and also the discharge approval by Minister and then the changes to the Fourth and Fifth Schedules.

This is my favourite part of any book or report, the conclusion. Having given due consideration to the various submissions, written and oral; and after interaction with those presenters along with the many robust discussions and with the benefit of guidance by Ms. Shawn R. Belle, Chief Parliamentary Counsel (Ag), the Committee agreed to the amendments as shown in the redrafted Bills, appended, and they will be appended.

**Madam DEPUTY CLERK:** Let me also add to the record

that the amendments that were provided this morning will be included in the report as well.

**Madam CHAIRMAN:** Okay. We are being advised that this will be included and augmented by the amendments and the amended Bills and the minutes for each meeting will be included in the report as well. Will this be as an appendix?

**Madam DEPUTY CLERK:** Yes, please.

**Madam CHAIRMAN:** Acknowledgement. The Committee wishes to thank and acknowledge all those organisations and persons who took the time and effort to submit written submissions. An expression of gratitude is extended to all those who were willing to make oral presentations before the Committee amidst numerous questions and worthy discussions.

Though the Committee may not have agreed with all the concerns raised, the suggestions and recommendations put forward, it is forever grateful for the different perspectives and views shared which valuably assisted in making all of the amendments; and for greater transparency and accountability.

The Committee expresses its sincere thanks and appreciation to Ms. Shawn R. Belle, Chief Parliamentary Counsel (Ag) for her tremendous assistance, tenacity, diligence, and foresight, we should put in patience, unless one of these words means patience, in enabling the Committee to accomplish its work in a satisfactory manner. The Committee extends gratitude to the Staff of Parliament for its diligence and commitment in expediting the work.

I think that the Committee should acknowledge the contribution of Senator the Honourable Dr. Chelston Brathwaite in a further draft, who started this process with us, but who for reasons, could not be here to finish it. I think his contribution was very useful in these meetings as well. Do we address it? Not in acknowledgements, but anywhere in our report? Guidance, please. Do we make any commentary? I know we would do it on the floor of Parliament but do we make any commentary at all about the public participation or that we continue to welcome the participation of the wider public? There is so much discussion out in the public, *et cetera*, but we really want...

**Madam DEPUTY CLERK:** Once that is the view and will of the committee, yes you can.

**Madam CHAIRMAN:** Okay. I feel we should put it in writing because for a Bill that had so much implications and discussions upfront. I mean there was a paltry 10 written submissions, so I think that we should add that in. Her Honour Miss Forde?

**Her Honour Miss C. Y. FORDE:** A formal acknowledgment should be sent to these people who made their contributions to just let them know that we thank them for their contributions to the exercise. Is that out of order?

**Madam CHAIRMAN:** No.

**Her Honour Miss C. Y. FORDE:** To my mind, it makes sense.

**Madam CHAIRMAN:** I think it is good. It is good public

---

relations and good manners because at least they took the time. Conversations will start again but nobody took the time... Minister Humphrey, you might be able to frame it more eloquently than I would. She is asking what do we want to go into? How do we want to address the 'thank you' for the people who participated and urge more people to participate where it matters? This is where we can hear them. We cannot hear them on the airwaves. Alright.

Any other inclusions or amendments? If none, I think that brings us to end of our work today. Given how efficiently we have managed today, I expect that when we come next Tuesday, I believe we can be completed in less than an hour. We can complete in a very efficient time. I just want to take this opportunity to thank everybody for making the effort. I know it has been a rough week and a few weeks for Ms. Belle dealing with a number of different pieces of legislation. As always, we thank you and apologise to you again.

She was here before any of us today, so thanks again. Lunch is going to be ready at 12:30 p.m. but we will adjourn now. You can never give enough thanks for the participation of the staff. Not only those who are taking the minutes of these very exciting meetings but also for the technical staff who facilitate our colleagues who are unable to make it here with us. Minister Lane, we thank you for joining us as well to ensure that we had a quorum today. Thanks everyone.

#### **ADJOURNMENT**

*On the motion of SENATOR. J. A. KING, seconded by Her Honour C. Y. FORDE, the committee adjourned until Tuesday, February 20, 2024 at 10:00 a.m.*

**EIGHTH MEETING OF THE JOINT SELECT COMMITTEE (STANDING)  
ON SOCIAL SECTOR AND THE ENVIRONMENT  
ON THE  
CHILD PROTECTION AND CHILD JUSTICE BILLS, 2023  
HELD IN THE SENATE CHAMBER, PARLIAMENT BUILDINGS  
TRAFALGAR STREET, BRIDGETOWN**

**TUESDAY, FEBRUARY 20, 2024**

**FIRST SESSION 2022-2027**

**IN ATTENDANCE:**

**Ms. TONI N. S-A. MOORE, J.P., M.P. (Chairman)**  
**Senator JOHN A. KING, B.S.S. (Deputy Chairman)**  
**Her Honour CYNTHIA Y. FORDE, J.P., M.P.**  
**Hon. COREY A. LANE, J.P., M.P. (online)**

**ABSENT:**

**Mr. T. A. PRESCOD J. P., M. P.**  
**Senator Rev. Canon Dr. JOHN A. ROGERS, B.Sc.,**  
**B.A. (Hons), M.Phil., D.Th.**

**ALSO IN ATTENDANCE:**

**Ms. Beverley S. GIBBONS (Deputy Clerk of Parliament)**  
**Ms. Shawn Raine BELLE (Chief Parliamentary Counsel**  
**(Ag.))**  
**Miss J'anne C. GREENIDGE, (Typist) (Journal**  
**Department)**

*The Chairman called the meeting to order at 10:33 a.m.*

**Madam CHAIRMAN:** We anticipate that this will be the final meeting of this Committee to examine the Child Protection and Child Justice Bills. On our agenda, we have the confirmation of the Minutes of the meetings held on September 19, 2023, October 3, 2023, October 6, 2023 and last Friday, February 16, 2024. It is proposed that we should go through each Minute for amendments and then, at the end of our examination of those four sets of Minutes, we will then go into Matters Arising out of those four sets of Minutes. We will take those together.

Following this, we will consider the draft Report and then, go into Any Other Business. I welcome also the Honourable Corey Lane who is joining us online so that we have our quorum set. Without further ado, let us proceed into an examination. I should mention also that we have received the transcript for Friday as well. Without further ado, let us go into an examination of the Minutes of September 19. If we can have those Minutes up before us,

is everyone seeing the Minutes of September 19? Just alert me once you do. Are you ready?

*Asides.*

**Madam CHAIRMAN:** It should be in the e-mail of February 7; I believe it is. It is sent in that e-mail. Alright. Examination of the Minutes, Tuesday, September 19, Page 1 for any amendments? Hearing none, we move on to Page 2. Call to Order, Confirmation of Minutes and Matters Arising. Oral presentations and examination commenced on that day. Page 3 is the Minute that captures the oral presentation of Dr. Veronica Evelyn and continues onto Page 4. Any amendments?

On Page 4, we started an examination of the oral presentation from the Child Care Board (CCB). That continues onto Page 5. It concludes at the start of Page 6. Continuing on Page 6, we had the Barbados Bar Association. This was their first appearance. There was then Any Other Business. There was none. We had the adjournment. That is Page 7. Therefore, I take it that there are no amendments to the Minutes of Tuesday, September 19. I would entertain a motion for the approval of those Minutes.

*On the motion of SENATOR. J. A. KING, seconded by Her Honour C. Y. FORDE, the Minutes of Tuesday, September 16, 2023, stand confirmed.*

**Madam CHAIRMAN:** We can proceed to an examination of the Minutes of Tuesday, October 3, 2023. On Page 1, we almost had a full house present. Page 2, Call to Order, Confirmation of Minutes from September 15, Matters Arising and there were none; deferral of Minutes and we continued with the oral presentations and their examinations on Page 2 starting with Family-Faith-Freedom, Barbados represented by Mr. Hutson Inniss, Mrs. Davida Maynard-Holligan and Reverend Carl Barker. Okay, that is on Page 2 of the Minutes under Item 2: Confirmation of Minutes. The Minutes of the Meeting on Friday, 08 September, 2023 were taken. That should be a

correction to reflect the Minutes of 15 September, so that is an amendment.

So, on Page 3 we continued and finished the Minutes for Family-Faith-Freedom, Barbados and started the Minutes of the Democratic Labour Party at the bottom of Page 3, continuing onto Page 4. Then we moved onto the Bar Association at the bottom of Page 5 - their second appearance. On Page 6, the meeting was suspended from 2:00 p.m. and we resumed at 3:33 p.m. Page 7. Page 8. Page 9 and Page 10 so a motion to approve the Minutes, as amended, for 03 October, 2024.

*The question that the Minutes for 03 October, 2023 be confirmed was moved by Senator J. A. King and seconded by Her Honour C. Y. FORDE.*

**Madam CHAIRMAN:** We move on to the Minutes of 06 October, 2023. Are we all at 06 October, 2023? Friday, 06 October, 2023. Page one (1), page two (2). Here is where we started to go through Clause by Clause. Page three (3). Page four (4). Page five (5). A motion to approve the Minutes.

*The question that the Minutes for 06 October, 2023 be confirmed was moved by Her Honour C. Y. FORDE and seconded by Senator J. A. KING.*

**Madam CHAIRMAN:** We have one final set of Minutes; the Minutes for Friday, 16 February, 2024. Page one (1), page two (2). Page three (3). Page four (4) - We considered the commencement of the draft report. Page five (5). A motion to approve the Minutes.

*On the motion of SENATOR. J. A. KING, seconded by Her Honour C. Y. FORDE, the Minutes of Tuesday, 16 February, 2024, stand confirmed.*

**Madam CHAIRMAN:** So we have before us four sets of Minutes. Minutes for 19 September, 2023; 03 October, 2023; 06 October, 2023; and 16 February, 2024.

We move on to "Matters Arising" and you are free to raise any matters arising from any of the four sets of Minutes.

**Senator J. A. KING:** Chair I need some clarity on something. I seem not to have remembered. On the issue of diversion, what was the final decision because we said that the parent Ministry should have been the ones to make the determination.

**Ms. SHAWN RAINE BELLE:** Chair, just in relation to diversion, the main decision was to keep it as is so that was the main decision and I do not have anything further on that.

**Madam CHAIRMAN:** Was there a rationale presented?

**Ms. SHAWN RAINE BELLE:** Chair, well I think that the rationale would have been based on what the Minister

would have presented at one of the meetings - that at the end of the day we are dealing with children who have come into conflict with the law and in as much as we want to treat them as a separate type of person, the fact of the matter is that crimes were still committed, so in that case you cannot completely divorce it from the courts but what you do is, and it is in the legislation itself, that it will not be considered to be a proceeding in that way.

**Madam CHAIRMAN:** Thank you Ms. Belle. Any other matters arising? I hear none so that we can move on to "Consideration of the Draft Report".

Under the Consideration of the Draft Report, I would have us pay particular attention to those areas where amendments were discussed and approved at the last meeting on Friday, 16 February, 2024. I will go through page by page, but when we come to the amendments I will highlight them.

The Draft Report before us is 35 pages and we will start with Page 1 which really outlines the Committee's Membership and the Bills that were referred to us. Page 2 captures the nine bullet points of the Terms of Reference of the Bills before the Committee. On Page 3, we had the Schedule of Meetings which we all recall that some of the meeting dates had to be shifted, but most of them were kept. We have to include on Page 3 of the Report, however, today's date, Tuesday, 20 February, 2024.

Now to Page 4 of the Report; this captures the different organisations and entities that the Committee invited to present submissions either in oral or written form and we have bulleted quite a few of these. Twenty-eight organisations were invited to present submissions and, of course, these had nothing to do with those when it went public, who had the opportunity to indicate that they were interested in presenting either an oral and/or written submission.

Page 5 of the Report is where we were discussing the structure of the oral presentations - ten minutes in length with a five-minute question and answer period and then 15 minutes would follow. Thirty minutes in all were allocated for each oral submission.

On Page 6, we examined the written submissions that were received. There were 13 of these submissions received. Starting at the bottom of Page 6, what is reflected in the Report is a summary of the Committee's examination of each, starting with Mr. Hutson Inniss, then on to the written submission of Mr. Vincent Smith.

On Page 8, we heard Ms. Norma Springer, Operation Safe Space, Mr. Kammie Holder. Moving on to Page 9, Mr. Victor Hoppin, Chief Probation Officer, Probation Department. Then onto Page 10, Dr. Veronica Evelyn, Barbados Council for the Disabled. Page 11, Mr. Junior Campbell and then we started the deliberations on the oral presentations captured here at Page 11 starting with Dr. Veronica Evelyn and on Page 12, the Child Care Board. Page 13 is where we started making some amendments. At the top of Page 13 we have Ms. Belle, after consultation

with the parent Ministry, reporting to the Committee that the proposed change in the term "Child Care Centre" would constitute a conflict with regard to the likely retention of Day Care Centres for children aged 0 – 3. This term was seen as accommodating both concepts and was prepared by the Ministry because you will recall that there was some discussion on changing the term "Child Care Centre" to "Child Protection Facilities" and after deliberation it was considered that "Child Care Centre" should remain. Is that accurate?

The next amendment reflected in the Report relates to desertion where it was considered because it was flagged at first as a policy issue to be directed to the parent Ministry where it was recommended that a timeframe should be included, but after deliberation it was considered that it was best left to the judiciary to determine the appropriate length of time for the desertion to be adjudged as desertion.

Also on page 13 the word "moral" in Clause 5F was recommended to be deleted and that was agreed by the Committee. At the bottom of Page 13, we see the reflection of the Child Care Board's concern relative to some words in Clause 5(h) of the Bill where they specifically had concerns with "does not/or refuses to/or obtain treatment" within the context of the paragraph that we see captured here. The Committee having reviewed it, felt that it was best to leave it.

Continuing on in the Report on Page 14, it reflects some conversations with different entities to discuss some of the proposed changes and so on. As we discuss the proposed changes, the next amendment that is reflected in the Report comes at page 15. An omission was identified and corrected regarding Clause 29(6) where the word "plan" was inserted after the word "care" so that the language would read:

*"Where a care plan is developed pursuant to subsection 2B, that care plan ..."*

it is the second "care" that was missing the "plan" after it. That was corrected.

It was recommended that a provision be made and be included in Clause 33 "*for the creation of a secure treatment facility*" which would cater for a new limb, "*children with extreme behaviours*". It was suggested that Clause 5 and Clause 33 would have to be amended to reflect that.

Ms. Belle, just go over that for me because how it written in the Report, and a person seeing that a secure treatment facility would cater for a new limb, might seem ambiguous.

**Ms. SHAWN RAINE BELLE:** Yes, Chair. Just to say that it was a suggestion but then it was concluded on consultation with the Ministry that that language would not be incorporated and that some of these matters may be best dealt with in subsidiary legislation.

**Madam CHAIRMAN:** It is a new limb, I get what it means but there is the language of it for some person in the public picking up the Report, especially given that there was so much discussion about what the Bill is intending to do and so on.

**Ms. SHAWN RAINE BELLE:** When a new limb was recommended, it was in the context that it would either have been a new paragraph or sub-paragraph, so in context that is what they meant by it having a new limb.

**Madam CHAIRMAN:** Is it only me who feels that we can replace that word in the Report?

**Ms. SHAWN RAINE BELLE:** You can say the word "provision".

**Madam CHAIRMAN:** Right. We, in here, know what we mean, but some person picking it up may be quick to go and run and say, "*They want children to get new body parts*" or something like that.

**Ms. SHAWN RAINE BELLE:** It is a new provision so you can say the generic word "provision".

**Madam CHAIRMAN:** Okay. Continuing onto Page 16 of the Report, this is where we started to discuss diversion. After some discussion it was agreed that further consideration should be given to the mechanism of diversion as a policy decision by the Ministry, and Ms. Belle is reporting that after consultation with the parent Ministry in relation to failure to comply with diversion/direction at Clause 38, Clause 38(1) was subsequently amended and should now read:

*"A written notice to the parent to have the child appear before a magistrate."*

Before it stated: "*A written notice to a child...*" That was a concern raised by many in our discussions.

The next amendment follows the presentation of the Barbados Bar Association and that is on Page 17, where they were recommending an amendment to the definitions of physical abuse and verbal abuse to exclude the words "omission" and "silence". It was suggested that they could be dealt with separately in the Bill, and we addressed that.

**Ms. SHAWN RAINE BELLE:** Yes, Chair, so in relation to the word "omission", that was removed from the definition of physical abuse, and in relation to "silence" that was removed from the definition of verbal abuse.

**Madam CHAIRMAN:** Right, so the recommendation of the Barbados Bar Association was accepted.

**Ms. SHAWN RAINE BELLE:** Yes, Chair.

**Madam CHAIRMAN:** Page 18 under Care Plan there was a recommendation to include a reference to a psychologist or a psychiatrist by the Bar Association, but on further deliberation it was felt and accepted by the Committee that in any event the Court would decide what was necessary, but that within the Child Care Board itself we also had the discussion that they had competent people and officers that could make an initial determination, and to recommend the use of a psychologist or psychiatrist would may be undermine the professionals within the Child Care Board. Page 19, we have proposed a new definition of Custody

Care Order, which is described in Clause 42 within the context of the Bill, so that was taken care of as well.

**Ms. SHAWN RAINE BELLE:** Chair, just to indicate that there was a discussion about whether the terminology should be changed because there was an argument that it could be mixed up with Custody Order in another place. It was explained that once one leans on the definition of Custody Care Order as described in Section 42 and as defined in Section 2, then you would understand the terms "Custody Care Order" in the context of the Bill. Thank you.

**Madam CHAIRMAN:** Okay. Thank you. Page 20. Page 21. Page 22. Page 23. Page 24. Clause 1 under the short title of the Child Protection Bill, "2023" is deleted and substituted with "2024" since we are now into 2024. Under Interpretation, "verbal abuse", the word "silence" was deleted. "Custody care order", based on the recommendation that custody and care were two separate concepts, the Committee agreed after the Chief Parliamentary Counsel's consultation with the parent Ministry, that "custody care order" in the context of the Bill did not offend any legal concept, and this formulation was to do with custody being descriptive of the care order and not two separate elements; which is what we just discussed. The Committee deleted "omission" from the definition of 'physical abuse'. As it relates to 'financial abuse', the Committee gave consideration to expanding its definition but after consultations, no amendments were made for this one.

On Page 25, we continued our examination of the Report. We have Clause 5(1)(f). The Committee agreed to amend Clause 5(1)(f) by deleting the word "moral", and then we had "participation of a child" at Clause 7(4). Sorry, before "child in need of care" I should have recognised that there was a Clause 3(1) which was redrafted to shift the compliance with international conventions to subsection (d) of the Clause.

We recall that there was much discussion on that one. Although it was there, we reordered it so that prominence could be given to what the Bill is for first and foremost: The protection of children. Clause 7(4), the Committee agreed that in relation to the provisions of that Clause that consequential amendments be made to the Community Legal Services Act, and that in the First Schedule, by amending the Second Schedule of the Child Protection Bill, so that it is understood that an attorney-at-law will be paid by the State where there were proceedings or hearings in relation to the child.

Page 26, we continue by looking at the issue of mandatory reporting. Ms. Belle reported that the parent Ministry had informed that there were no recorded objections to date on mandatory reporting from medical practitioners, especially from their representative body the Barbados Association of Medical Practitioners (BAMP), so it was not considered as a major issue.

Continuing onto Page 27, where there was some discussion at the policy level as to whether or not -- this was the issue pertaining to priests being exempt or those

who are under professional seal and who might be prevented from divulging information. However, after some discussion, the Committee referred the issue for ventilation at the policy level by the parent Ministry, and it was the opinion of the parent Ministry that with regard to Catholic priests' confessional seal, the Bill does not specify any religious sect and to create such an exemption would necessitate the removal of 'religious' from the categories of persons required to report. We accepted that position, so there is no change. As stated previously, we have included "plan" after "care" in Clause 29 (6).

Part V, Child Care Centres, approved Child Care Centres; Clause 53 was amended by deleting the letter "s" from the word "cares" and the word "centres". That was a fairly cosmetic amendment.

Page 28, we had "Child Care Service" being replaced with "Child Care Centre". Corporal punishment, Clause 59 (2), Ms. Belle, do you mind taking this one?

**Ms. SHAWN RAINE BELLE:** I am sorry Madam Chair. Yes, so the original words used in the Clause were "*severe and frightening measures*", and on consultation with the parent Ministry, it was determined that those words would be deleted and substituted with the words "cruel", "inhumane" or "degrading measures", because this language is used in international law and the Barbados Constitution.

**Madam CHAIRMAN:** Okay, thank you. We then continued to Miscellaneous and Repeal and Savings, and the following Acts are repealed. That is Clause 68 (1), Prevention of Cruelty Act Cap. 145 was substituted by Prevention of Cruelty to Children Act Cap. 145.

First Schedule, Temporary Appointment of Board, and that was amended by deleting the words "of board" so it will just be "Temporary Appointments". The Second Schedule, as mentioned before, the amendment was made relative to the Community Legal Services Act. That concludes our examination and consideration of the Child Protection Bill. I would just want Members of the Committee to check through our list of amendments to verify that these were indeed all of the amendments that were addressed.

**Ms. SHAWN RAINE BELLE:** Madam Chair, just to look at the draft report on Page 28. I think this would have been something that would have been carried over from the previous page, when it talks about the consequential amendments. It is Part II of the First Schedule to the Community Legal Service Act that was amended to make provision for the attorney to be paid by the State. CPB, in this context, is the Child Protection Bill, because it has to be made clear that the Second Schedule deals with consequential amendments. Hence, I do not know if there is more clarification that can be put there, that the Second Schedule addresses consequential amendments, makes provision for the CPB to be amended accordingly.

**Madam CHAIRMAN:** The Second Schedule which addresses consequential amendments makes provision for the CPB to be amended accordingly. Is that what you are saying



**Ms. SHAWN RAINE BELLE:** No, the Second Schedule of the CPB, which makes provision for consequential amendments, makes provision for the amendment as described above accordingly. There has to be clarification that the Second Schedule of the CPB deals with consequential amendments.

**Madam CHAIRMAN:** Okay.

**Ms. SHAWN RAINE BELLE:** However, it is in terms of the actual amendment that was made, it is Part II of the First Schedule to the Community Legal Service Act.

**Madam CHAIRMAN:** Okay. Do you have that?

**Madam DEPUTY CLERK:** Yes, please.

**Madam CHAIRMAN:** We are now into an examination of the Child Justice Bill. Last Friday you will recall that we considered nine amendments. Hence, Page 29, similarly to the Child Protection Bill, the year was changed to 2024, we captured that.

Part IV; securing attendance of a child at initial inquiry. Under Clause 22 the word "policy" was deleted and the word "police" was substituted for that.

Part V; Initial Inquiry and Diversion. The specific clause that was examined was Clause 34, and we are continuing onto page 30 with that. The Committee focused on Clause 34 (g) and (h), and after some discussion, decided the committee's concerns with the provisions in these clauses be brought to the attention of the parent Ministry for further information when making its decision. As explained previously by Ms. Belle following the discussion with the parent Ministry, the Committee agreed to the sole amendment made by the parent Ministry, relative to the provision for failure to comply with diversion/direction by amending Clause 38(b) to reflect a written notice to the parent to have the child appear before a Magistrate. None of the other comments relative to diversion were proposed for amendment or were accepted as amendments.

**Ms. SHAWN RAINE BELLE:** Madam Chairman, just to say the reference to Clause 38 should be changed to Clause 38 (1)(b). Thank you.

**Madam CHAIRMAN:** The change at Clause 42 was again cosmetic; a font-change from bold to regular. Clause 68 was amended by substituting 'a term of imprisonment' with a "a term of detention". This is at the bottom of Page 30 of the report. Moving on to Page 31 of the report, there is the examination of Clause 87; the power to the Director to impose discipline on a child in a secure residential facility. Clause 87 (1) was amended by deleting the words, as we said, "severe or frightening measures" to reflect the language in international law. We have "cruel, inhumane or degrading measures". Therefore, similar to the Child Protection Bill.

Clause 92; Discharge approval by Minister: It was agreed that there was need for clarification in relation to who had the authority to make the application to the Minister and for a reconsideration of the Minister's powers. This is a critical one. The issue was brought to the attention of the parent Ministry and Clause 92 was

recommended to be amended to read as follows:

*"The Minister may, on consultation with the Director, approve the discharge of a child from a secure residential facility on application made to him in writing by an appropriate adult, attorney-at-law representing the child, or a parent where that child has served two-thirds of his sentence or a term of the order or the custodial portion of the sentence made by a magistrate or judge."*

**Madam CHAIRMAN:** The Committee felt more comfortable with that clarification.

Continuing on Page 31, we examined the Third and Fourth Schedules. There was nothing amended. On Page 32, we have the examination of the Fifth Schedule. The Chairman had queried why the provision for the Minutes of the Reintegration Board would be submitted as soon as possible, rather than having a definite timeline. The provision was amended for within two weeks.

Page 32 continues with the **Conclusion** that follows onto the beginning of page 33. It states the majority of the submissions and presentations were focused on the issue of sexual orientation and gender identity with respect to the Child Protection Bill (CPB). I am just reading that paragraph there. It is just the observations of the two Bills.

Most of the concerns for the Child Protection Bill related to gender identity, whereas the issue of diversion preoccupied much of the attention under the Child Justice Bill. At the bottom of Page 33 are the **Acknowledgements**. I will take a pause for two minutes for us to make sure that all the aspects or the salient points are captured for the report.

**Ms. SHAWN RAINE BELLE:** Madam Chairman, just in relation to Page 2, this speaks to the **Terms of Reference**, specifically, 4.2, where it refers to the examination of the **Standard Minimum Rules** for the administration of justice; I just need to get my reference correct. This is a reference to the United Nations (UN) Rules. It would be the UN Standard Minimum Rules for the Administration of Juvenile Justice.

**Madam CHAIRMAN:** The UN Standard Minimum Rules?

**Ms. SHAWN RAINE BELLE:** Yes. You would be capitalising "Standard Minimum Rules". Administration of Juvenile Justice is also capitalised.

**Madam CHAIRMAN:** Administration of Juvenile Justice?

**Ms. SHAWN RAINE BELLE:** Yes. In relation to the "Protection of Juveniles Deprived of Their Liberty", the reference would be to the UN Rules for the Protection of Juveniles Deprived of Their Liberty. "Protection" would be capitalised. "Juveniles" capitalised. "Deprived" capitalised. "Of Their Liberty" capitalised.

**Madam CHAIRMAN:** You said, "Of Their Liberty"?

**Ms. SHAWN RAINE BELLE:** Yes. In relation to the Delinquency Rules which are the Riyadh Rules, the United

Nations (UN) Guidelines for the Prevention of Juvenile Delinquency. Those are the Riyadh Rules. "Prevention" would be capitalised. "Juvenile Delinquency" would be capitalised.

**Madam CHAIRMAN:** Okay. Got you.

**Ms. SHAWN RAINE BELLE:** In 4.1, you would have the "International Conventions on the Rights of the Child". "Rights" being capitalised. It would really be the UN Convention on the Rights of the Child. You would be speaking about: "...to enquire and determine whether the Bills as drafted fulfil the expressed purposes to ensure compliance with the UN Convention on the Rights of the Child, the Universal Declaration of Human Rights and all other international instruments to which Barbados is a signatory".

**Madam CHAIRMAN:** Thank you. Any other comments, questions, amendments. If I hear none, or since I hear none. That brings us to the point that we can entertain a motion for the acceptance of the report as amended.

**Senator J. A. KING:** I would like to move that the report be accepted as amended.

**Her Honour C. Y. FORDE:** Seconded Madam Chair.

**Madam CHAIRMAN:** All those Members in favour say 'Aye'. All against say 'Nay'. Methinks the 'Ayes' have it.

So, then we have before us the Report as amended and it is left for the Members of the Committee therefore to sign off. This brings us to the final item on the agenda Any Other Business. I am hearing that there is no other business.

I take this opportunity once again for the final time in the course of this Committee's work to thank everybody. The last set of Minutes, which will be today's Minutes, will be prepared as will the Report with the Amendments and circulated round-robin so we will not need to come back here for that.

So it is only then left for me to express my sincere thanks to each Member of the Committee who sacrificed to make sure that we could see this through. Special thanks, of course, have to be extended to you Ms. Belle. I keep saying this woman has patience like Job to entertain us first of all, and to make sure, as laypersons, that we understand the complexity of the language in the Bill. I think that we are all the better for it and for the patience exercised as well when we went through the written submissions and, of course, the oral presentations.

To the staff of Parliament who worked with us, and sometimes had to bear the pressure of the deadlines that we would set, and I promise to you that it is going to get worse and I apologise up front for that, and I thank you in anticipation for your cooperation when that moment comes; and thanks as well to the technical team that was always with us to ensure that where our Committee Members could not meet in person, that online component of our meetings could be facilitated.

So, to everyone, a special thanks until the next time that there is a Joint Select Committee meeting; the

Social Committee has to be convened to examine another matter so we take a breather and we will meet again.

*At this point, a motion was made and agreed on to adjourn the Meeting by Her Honour Miss C. Y. Forde and seconded by Senator J. A. King.*



**REPORT OF THE JOINT SELECT COMMITTEE (STANDING)  
ON SOCIAL SECTOR AND THE ENVIRONMENT ON THE  
CHILD PROTECTION BILL, 2023 AND  
CHILD JUSTICE BILL, 2023**