

CHILD JUSTICE BILL 2024
(BILL NO. 4 OF 2024)

CLAUSES

PART 1—PRELIMINARY

1. Short title and commencement
2. Interpretation
3. Objectives
4. General principles
5. Application
6. Age determination
7. Abolition of the words “conviction” and “sentence” in relation to children in conflict with the law

PART 2—ORGANISATION OF SERVICES FOR THE SUPERVISION,
REHABILITATION AND REINTEGRATION OF CHILDREN IN CONFLICT
WITH THE LAW

8. Powers and duties of the Director
9. Delegation of powers
10. Duties of child justice officers
11. Register of Approved Child Justice Agencies and Organisations

PART 3—DIVERSION

12. Objectives of diversion
13. Children to be considered for diversion
14. Diversion plans
15. Referral to community conference
16. Effect of diversion plan

PART 4—CHILDREN AND THE POLICE

17. Children under the age of criminal responsibility
18. Police to consider alternatives to initiating proceedings
19. Arrest
20. Uncertainty as to age
21. Notification of parents
22. Notification of child justice officer
23. Role of the child justice officer on arrest or detention of a child in conflict with the law
24. Questioning and statements from a child in conflict with the law
25. Police conduct generally
26. Taking of fingerprints and photographs only on court order

- 27. Release by police
- 28. Custody of children not released after arrest
- 29. Children in police custody

PART 5—PRE-TRIAL RELEASE AND REMAND OF CHILDREN IN CONFLICT WITH THE LAW

- 30. Presumption in favour of release
- 31. Releasing child under supervision and with condition
- 32. Placement of child in remand
- 33. Expediting proceedings where child in remand

PART 6—CHILD JUSTICE COURT

- 34. Establishment of Child Justice Court
- 35. Rules
- 36. Jurisdiction of Child Justice Court
- 37. Separation and joinder of trials involving children in conflict with the law and adults
- 38. First appearance inquiry
- 39. Court may divert matter
- 40. Referral of child to care and protection hearing
- 41. Conduct of court proceedings generally
- 42. Presence of parents
- 43. Legal representation
- 44. Time limits for conclusion of proceedings
- 45. Appeals

PART 7—METHODS OF DEALING WITH CHILDREN

- 46. Child dealt with under this Part
- 47. Purpose and principles
- 48. Social inquiry report
- 49. Referral to community conference for recommendations
- 50. Methods of dealing with children in conflict with the law
- 51. Child in conflict with the law entitled to explanation of order
- 52. Limits on community work
- 53. Conditions relating to community-based corrections orders
- 54. Restrictions on use of custodial orders
- 55. Placement of children subject to a custodial order
- 56. Prohibition of certain forms of punishment

PART 8—CUSTODIAL FACILITIES FOR CHILDREN

- 57. Purpose of custodial facilities
- 58. Approval of custodial facilities

- 59. Remand homes
- 60. Rehabilitation centres for children
- 61. Children in custody
- 62. Periodic review
- 63. Absconders
- 64. Reintegration into the family or community

PART 9—RECORDS AND PRIVACY

- 65. Restriction of publication of proceedings
- 66. Criminal record
- 67. Confidentiality of records

PART 10—MISCELLANEOUS

- 68. Regulations
- 69. Repeal
- 70. Savings
- 71. Transitional
- 72. Consequential amendments

SCHEDULE—CONSEQUENTIAL AMENDMENTS

BILL NO. 4 OF 2024

A BILL

FOR AN ACT TO ESTABLISH A COMPREHENSIVE, SPECIALISED CRIMINAL
JUSTICE SYSTEM FOR CHILDREN AND FOR RELATED MATTERS

ENACTED by the Parliament of the Republic of Fiji—

PART 1 — PRELIMINARY

Short title and commencement

- 1.—(1) This Act may be cited as the Child Justice Act 2024.
- (2) This Act comes into force on a date or dates appointed by the Minister by notice in the Gazette.

Interpretation

2. In this Act, unless the context otherwise requires—
 - “adult” means a person who is 18 years of age or older;
 - “appropriate support person” means an adult, other than a parent or family of a child and who is required to provide support to a child under this Act;

“Approved Child Justice Agencies and Organisations” means the agencies and organisations that provide non-residential programmes or services for the diversion, education, rehabilitation and vocational training of children in conflict with the law;

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

“child in conflict with the law” means a child above the age of 14 years, who is alleged to have committed, accused of, charged with, or found guilty of, committing a criminal offence;

“Child Justice Court” means a court established under section 34;

“child justice officer” means a person who is employed as a child justice officer in the Department, and includes the Director, assistant Director and any child welfare officer, welfare officer or community-based corrections officer;

“child welfare officer” has the meaning given in section 3 of the Child Care and Protection Act 2024;

“community-based corrections officer” has the meaning given in section 2 of the Community-Based Corrections Act 2018;

“community volunteer supervisor” has the meaning given in section 2 of the Community-Based Corrections Act 2018;

“court” means any court exercising jurisdiction in criminal matters;

“Department” has the meaning given in section 3 of the Child Care and Protection Act 2024;

“Director” has the meaning given in section 3 of the Child Care and Protection Act 2024;

“diversion” means diverting a child in conflict with the law from the formal justice system and resolving the conflict through community-based interventions under Part 3;

“family”, in relation to a child, means—

- (a) a parent, step-parent, grandparent, sibling, half-sibling, uncle, aunt or cousin of the child, whether by birth or adoption;
- (b) the primary care-giver of the child; or
- (c) any other person with whom the child has developed a significant relationship based on psychological or emotional attachment, which significantly resembles a family relationship;

“Family Division” has the meaning given in section 2 of the Family Law Act 2003;

“indictable offence” means an offence under the Crimes Act 2009 or any other written law that prescribes an offence to be an indictable offence;

“Legal Aid Commission” means the Legal Aid Commission established under section 4 of the Legal Aid Act 1996;

“Minister” means the Minister responsible for child welfare;

“Ministry” means the Ministry responsible for child welfare;

“parent” means —

- (a) the birth or adoptive mother of a child;
- (b) the birth or adoptive father of a child;
- (c) a guardian or person to whom residence of a child has been granted by the Family Division or by an agreement endorsed by the Family Division; or
- (d) a caregiver with whom a child lives and who stands in place of the child’s mother or father;

“police officer” means any officer of the Fiji Police Force;

“public prosecutor” means the Director of Public Prosecutions and any person appointed by the Director of Public Prosecutions to be a prosecutor or to prosecute any particular case;

“records” includes films, audio-visual work, microfilms, videos, computers or software programmes, interactive games, compact discs, e-mail, internet, books, journals, photographs, or records on communication or telecommunication networks of any type, method or technology;

“Register” means the Register of Approved Child Justice Agencies and Organisations established under section 11;

“social inquiry report” means a report on the personal and family history and present environment of a child made in accordance with section 48;

“summary offence” means an offence under the Crimes Act 2009 or any other written law that prescribes an offence to be a summary offence, and which is triable in a Magistrates Court; and

“welfare officer” means a person who is employed as a welfare officer in the Department.

Objectives

3. The objectives of this Act are to—

- (a) establish the basis for the administration of a child justice system designed to reduce offending and re-offending by children in conflict with the law and contribute to safer communities by holding children accountable for their actions, promoting children’s rehabilitation and encouraging them to become law-abiding and productive citizens;

- (b) provide for the special treatment of children at all stages of the criminal proceedings;
- (c) prevent children from being exposed to the adverse effects of the formal criminal justice system by using, where appropriate, diversionary alternatives;
- (d) promote involvement of families, traditional or community leaders, civil society and community members in the rehabilitation and reintegration of children in conflict with the law; and
- (e) promote co-operation between government departments and the civil society to ensure an integrated and holistic approach in the implementation of this Act.

General principles

4. A court or person performing a function under this Act must be guided by the following principles—

- (a) the best interests of the child must be the primary consideration in any action taken in relation to a child;
- (b) every child is entitled to enhanced procedural protections and to be treated in a manner that is appropriate to their age and ensures that their rights are fully respected;
- (c) every child must, as far as practicable, be given the opportunity to meaningfully participate in any proceedings that affect him or her;
- (d) unless the interests of justice require otherwise, criminal proceedings must not be instituted against a child if there is an alternative means of dealing with the matter;
- (e) all procedures under this Act must be conducted and completed without unreasonable delay;
- (f) parents or other appropriate adults must be able to assist a child at all stages of criminal proceedings and, wherever possible, participate in decisions affecting the child;
- (g) all consequences arising from the commission of an offence must be proportionate to the circumstances of a child and the nature and seriousness of the offence, and the child must not be treated more severely than an adult would be treated in the same circumstances;
- (h) measures taken against a child who has or is alleged to have committed a criminal offence should seek to—
 - (i) hold the child accountable for his or her actions and reinforce respect for positive societal values, customs and traditions;
 - (ii) encourage the repair of harm done to victims and the community;

- (iii) take the least restrictive form that is appropriate in the circumstances;
 - (iv) where appropriate, actively involve parents, family members, the community and civil society in the child's rehabilitation and reintegration; and
 - (v) take into account the personal background of the child and the circumstances that led to the commission or the alleged commission of the criminal offence; and
- (i) children may only be subjected to deprivation of liberty, whether on arrest, remand or after a finding of guilt, as a measure of last resort and for the shortest period of time necessary.

Application

5.—(1) This Act applies in respect of any child who is charged with or alleged to have committed an offence and who, at the time of the alleged commission of the offence, was above the age of 14 years.

(2) A child who is alleged to have committed an offence must not be arrested, detained or tried except in accordance with this Act and any other written law.

(3) A child who is under the age of 14 years at the time of the alleged commission of an offence must not be held criminally responsible for the offence.

(4) All laws relating to the conduct of criminal proceedings apply to any person referred to in this Act, with changes as may be required by the context, except in so far as this Act provides for different procedures to apply.

Age determination

6.—(1) Where a person who is charged with or alleged to have committed an offence, claims or appears to be under the age of 18 years, that person must be treated as a child for the purposes of this Act, subject to a determination of that person's age in accordance with subsection (2).

(2) Where a person who appears to be under the age of 18 years is charged with or alleged to have committed an offence and there is doubt or dispute as to the age of the person, the person's age must be determined by the court.

(3) In making a determination of the age of a person, the court must have regard to any available information including—

- (a) the person's the birth certificate;
- (b) any previous determination of the person's age by a court;
- (c) the person's school records, health card, baptismal certificate or other documentation of a similar nature; and
- (d) any statement made by the person claiming to be under the age of 18 years, a parent or any other person who is likely to have direct knowledge of the age of the person.

(4) An age determination must not be made on the basis of physical appearance alone.

(5) Where there is doubt as to the age of a person who appears or claims to be under the age of 18 years, the benefit of the doubt lies with the person claiming or who appears to be under the age of 18 years.

(6) A court must in every order of detention it makes under this Act, state the date of birth or the age of the child as declared by the court.

Abolition of the words “conviction” and “sentence” in relation to children in conflict with the law

7.—(1) The words “conviction” and “sentence” must not be used in relation to a child in conflict with the law.

(2) Any reference in any written law to a person convicted, a conviction or a sentence must, in the case of a child in conflict with the law, be construed as including a reference to a person found guilty of an offence, a finding of guilt or an order made upon such a finding, as the case may be.

PART 2—ORGANISATION OF SERVICES FOR THE SUPERVISION, REHABILITATION AND REINTEGRATION OF CHILDREN IN CONFLICT WITH THE LAW

Powers and duties of the Director

8. The Director is responsible for the promotion and the development of policies, procedures and services for the supervision, rehabilitation and reintegration of children that accord with the objectives of this Act, including—

- (a) encouraging a collaborative approach between government authorities, non-government organisations, faith-based organisations and communities in the development of diversion, rehabilitation and reintegration services for children in conflict with the law;
- (b) formulating policies, guidelines, plans and standards for diversion, reintegration and rehabilitation services for children in conflict with the law;
- (c) promoting the development of programmes and services for the rehabilitation, education and vocational training of children in conflict with the law, in partnership with government agencies, non-government organisations, faith-based organisations and traditional or community leaders;
- (d) developing national programmes for the training of child justice officers, community-based corrections officers and community volunteer supervisors to ensure child justice specialisation;
- (e) maintaining statistics on children in conflict with the law;
- (f) promoting research on effective models for rehabilitation and reintegration of children in conflict with the law;

- (g) ensuring the supervision and fair treatment of children in conflict with the law who are subject to orders of custody and community-based corrections; and
- (h) monitoring and assessing the services provided under this Act by the Director and by other organisations, groups and individuals.

Delegation of powers

9. The Director may delegate, in writing, either generally or specifically, to any officer of the Department as he or she thinks fit, all or any of the powers exercisable by the Director under this Act, and may revoke the delegation in writing at any time.

Duties of child justice officers

10.—(1) A child justice officer has the duties and powers of a community-based corrections officer under the Community-Based Corrections Act 2018.

(2) In addition to the duties specified in any other written law, a child justice officer is responsible for—

- (a) providing children in conflict with the law with support, basic counselling and basic information about their rights at all stages of the criminal justice process;
- (b) conducting timely assessments of a child’s background and circumstances;
- (c) providing advice and recommendations to the police, public prosecutors and courts, as requested, with respect to any decision made under this Act regarding diversion, bail and orders imposed upon a finding of guilt against a child in conflict with the law;
- (d) promoting the development of diversion and community-based sentencing options by enlisting support from local governments, traditional or community leaders, civil society groups, faith-based organisations and members of the community;
- (e) convening, or causing to be convened, and reporting on any community conference as requested by a police officer, public prosecutor or court;
- (f) maintaining a record of approved civil society groups or individuals providing programmes, supervision and mentoring for diversion and community-based sentencing options under this Act;
- (g) preparing and submitting reports and records as a court may require; and
- (h) maintaining an adequate system of confidential records of children under his or her supervision.

Register of Approved Child Justice Agencies and Organisations

11.—(1) This section establishes the Register of Approved Child Justice Agencies and Organisations which is to be maintained and kept by the Director.

(2) The Register must contain a record of all agencies and organisations that provide non-residential programmes or services for the diversion, education, rehabilitation and vocational training of children in conflict with the law.

(3) The Register must include, in relation to each agency or organisation on the Register—

- (a) its registered name and registered address;
- (b) the qualifications held by any person providing services to children in conflict with the law within that agency or organisation; and
- (c) any other information that the Director thinks appropriate.

(4) Any agency or organisation that provides or intends to provide services to children in conflict with the law must be duly registered in accordance with this section.

(5) An application to be registered under this section must—

- (a) be made to the Director in the approved form; and
- (b) include any documentary information as required by the Director in order to enable the Director to make a determination on the application.

(6) If the Director is satisfied that the criteria under subsection (5) is met, the Director must grant a certificate of registration to an applicant on terms and conditions as the Director sees fit, and including any term and condition as may be prescribed by regulations.

(7) If the Director rejects an application for registration, the Director must, within 90 days of his or her decision, advise the applicant in writing of the reasons for the decision.

(8) The Director may cause the name of an agency or organisation to be removed from the Register if—

- (a) it ceases, for any reason, to function or to be authorised to function as an agency or organisation providing services to children in conflict with the law;
- (b) it fails to meet any term and condition prescribed by regulations; or
- (c) it fails to adhere to the requirements and standards implemented by the Director.

(9) Where the Director wishes to remove the name of an agency or organisation from the Register for any reason referred to in subsection (8), the Director must give written notice to that agency or organisation and consider any representation made in that matter.

(10) A person who contravenes this section commits a summary offence and is liable on conviction to—

- (a) in the case of an individual, a fine not exceeding \$10,000 or a term of imprisonment not exceeding 2 years or both;

- (b) in the case of a body corporate, a fine not exceeding \$15,000.

PART 3—DIVERSION

Objectives of diversion

12. The objectives of diversion are to—

- (a) deal with children in conflict with the law outside the formal criminal justice system in appropriate cases;
- (b) provide an effective and timely response to a child's offending behaviour;
- (c) encourage a child in conflict with the law to acknowledge and repair the harm caused to a victim and the community;
- (d) promote reconciliation between a child in conflict with the law and the person or community affected by the child's offending behaviour;
- (e) promote the rehabilitation and reintegration of a child in conflict with the law into his or her family and community;
- (f) encourage the parents, family and traditional or community leaders of a child in conflict with the law to be directly involved in holding the child accountable and providing opportunities for the child to correct his or her offending behaviour;
- (g) prevent stigmatisation and other adverse consequences to children in conflict with the law as a result of being subject to the criminal justice system; and
- (h) prevent a child in conflict with the law from having a criminal record.

Children to be considered for diversion

13.—(1) A child in conflict with the law may be diverted by—

- (a) in the case of a summary offence, the officer-in-charge of a police station in consultation with a child justice officer; or
- (b) in the case of an indictable offence, other than murder and attempted murder, a public prosecutor.

(2) A child may be considered for diversion if—

- (a) the child, being of sound mind, voluntarily acknowledges responsibility for the offence;
- (b) there is sufficient evidence to prosecute;
- (c) the child, having had the opportunity to consult with a legal representative, consents to diversion and the diversion plan; and
- (d) the person exercising discretion under this Act to divert a matter is satisfied that it is in the interests of justice that the matter be resolved through diversion.

(3) In determining whether diversion is in the interests of justice under subsection (2)(d), regard must be made to the following—

- (a) the nature and seriousness of the offence;
- (b) the background and circumstances of the child;
- (c) any views expressed by a victim; and
- (d) the need to ensure public safety.

(4) Diversion may not be used in respect of a child who—

- (a) denies participation or involvement in the commission of an offence; or
- (b) expressly wishes to have the charge dealt with by the court.

(5) An acknowledgement of responsibility made under subsection (2)(a) may not be used for the purposes of any criminal proceedings against a child, including the criminal proceedings for which diversion has been contemplated.

(6) The Director of Public Prosecutions may issue guidance on the exercise of discretion under this section.

Diversion plans

14.—(1) A child in conflict with the law who has been diverted from the formal justice system may be subject to a diversion plan.

(2) A diversion plan must—

- (a) be agreed to and signed by the child and his or her parents;
- (b) be appropriate to the age and maturity of the child;
- (c) be proportionate to the offence;
- (d) include an undertaking by the child to complete any condition contained in the diversion plan within the specified timeframe;
- (e) contain details of the services and assistance, if any, to be provided to the child;
- (f) set out times, not exceeding any limits imposed by this Act, for the implementation of the diversion plan;
- (g) identify a child justice officer or welfare officer to monitor the child's compliance with the diversion plan; and
- (h) specify what will occur to the child if the diversion plan is not adhered to.

(3) A diversion plan may include one or more of the following conditions for the child—

- (a) an oral or written apology to be made to a specified person;
- (b) regular attendance at school;

- (c) participation in a counselling, rehabilitation or vocational training programme approved by the Director;
 - (d) supervision and guidance by an appropriate adult or peer mentor;
 - (e) restitution, including return of any item taken or repair of any damage done;
 - (f) with the consent of the victim, the provision of specified services to the victim;
 - (g) subject to section 52(2), the performance of up to 50 hours of community service work; or
 - (h) any other measure appropriate to the child and the local circumstances, which is consistent with the principles of this Act.
- (4) A diversion plan must not include any condition that—
- (a) is exploitive, harmful or hazardous to the child’s physical or mental health;
 - (b) involves punishment that is more onerous than the child would have received through the formal criminal justice system;
 - (c) involves corporal punishment, public humiliation or anything that would degrade or stigmatise the child;
 - (d) involves any form of deprivation of liberty; or
 - (e) interferes with a child’s education.
- (5) A copy of any diversion plan entered into in accordance with this section must be sent to the Director.

Referral to community conference

15.—(1) A person exercising authority under this Act to divert a child may convene, or cause to be convened through a child justice officer or a welfare officer or a traditional or community leader, a community conference for the purpose of developing a diversion plan.

- (2) The purpose of a community conference is to—
- (a) encourage the child to accept responsibility for his or her behaviour;
 - (b) involve the child’s family and community in supporting the child to take responsibility for his or her actions and to promote responsible behaviour in the future;
 - (c) allow a victim or any person nominated by the victim, to participate in decision making;
 - (d) determine what support services are necessary to enable the child to overcome the offending behaviour; and
 - (e) agree to a means by which the child can repair the harm caused to the victim or the community.

(3) Depending on the nature of the offence and the best interests of the child, a community conference may involve any of the following—

- (a) the child and any other appropriate support person nominated by the child;
- (b) the child’s parents;
- (c) other members of the child’s family;
- (d) a victim of the alleged offence and if applicable, any other person nominated by the victim, provided that the victim consents to participate;
- (e) a police officer;
- (f) respected members of the community where the child lives;
- (g) representatives from a faith-based organisation or civil society group providing supervision and support services to children in that community;
- (h) if the child attends school, a representative of the school; or
- (i) any other person whose involvement, in the opinion of the convenor, would be of assistance in developing a diversion plan.

(4) Within 14 days of receiving a request to convene a community conference under subsection (2), the convenor must organise a community conference and submit the proposed diversion plan to the diverting authority for approval.

Effect of diversion plan

16.—(1) If a diversion plan is completed, no further action must be taken against the child in respect of the offence to which the diversion plan relates and any criminal charge laid must be withdrawn.

(2) If a diversion plan is not complied with, the child may be subject to prosecution as if the diversion plan had not been entered into.

PART 4—CHILDREN AND THE POLICE

Children under the age of criminal responsibility

17. Where a police officer has reason to believe that a child suspected of having committed an offence is under the age of 14 years, he or she must not arrest the child, and must, after ascertaining the child’s personal details, immediately—

- (a) hand the child over to his or her parents or other family member; and
- (b) notify a child welfare officer that the child may be in need of care and protection.

Police to consider alternatives to initiating proceedings

18.—(1) A police officer must, before initiating criminal proceedings against a child for a summary offence, consider whether it would be appropriate, having regard to the nature of the alleged offence and the principles set out in section 4, to—

- (a) informally warn the child on the spot by explaining to the child that his or her actions constitute an offence and advising the child that if he or she persists in such behaviour, he or she may be charged the next time; or

- (b) formally warn and advise the child by—
 - (i) explaining to the child that his or her actions constitute an offence and advising the child to change his or her behaviour; and
 - (ii) issuing a written warning to the child in the presence of his or her parents.

(2) A formal warning may only be issued by a police officer with the rank of inspector or above.

(3) A child who is dealt with under this section must not be held in police custody.

Arrest

19.—(1) Where a police officer arrests a child, with or without a warrant, the police officer must immediately—

- (a) advise the child that he or she is under arrest;
- (b) explain to the child the nature of the allegations against him or her;
- (c) explain to the child his or her rights, including the right to legal representation and the availability of free legal aid from the Legal Aid Commission; and
- (d) answer any questions that the child may have.

(2) The police officer must give any information or explanation required to be given under this section in a manner and in language that is appropriate to the age and level of understanding of the child.

(3) In carrying out an arrest of a child, a police officer must not use physical force or means of restraint unless—

- (a) the child resists the arrest or seeks to evade arrest; or
- (b) the use of force or restraint is necessary to prevent the child from causing harm to himself or herself or others.

(4) Any use of physical force under subsection (3) must be reasonable and appropriate, and be the minimum necessary in the circumstances.

Uncertainty as to age

20. If a police officer is uncertain as to the age of a person suspected of having committed an offence but has reason to believe that the person may be under the age of 18 years, the police officer must treat the person as a child for the purposes of this Act, subject to a determination of the person's age by a court.

Notification of parents

21.—(1) Where a child is arrested by a police officer, the police officer must immediately notify the child's parents or other person having the care of the child.

(2) If the whereabouts of the child's parents is not known or it appears that no parent is available, a notice under this section must be given to an appropriate support person nominated by the child.

(3) A police officer may request the assistance of a child justice officer in identifying and contacting a child's parents or other appropriate support person and the child justice officer must provide such assistance.

Notification of child justice officer

22. A police officer must, not later than 24 hours after arresting a child, notify the child justice officer in whose jurisdiction the child was arrested, of the arrest.

Role of the child justice officer on arrest or detention of a child

23. A child justice officer may—

- (a) enter any police station, lock-up or any other place of detention for the purpose of interviewing a child in conflict with the law and making inquiries about the child's background and circumstances;
- (b) be present for any police questioning or interrogation of a child in conflict with the law;
- (c) ask questions of an arresting officer or charging officer in respect of any child in conflict with the law who is arrested or who is charged with an offence;
- (d) where requested, make recommendations to a police officer or a public prosecutor with respect to the appropriateness and availability of diversion and possible release of the child in conflict with the law into the care of a parent or an appropriate adult; and
- (e) where requested, make recommendations to the court with respect to releasing the child in conflict with the law, pending trial.

Questioning and statements from a child in conflict with the law

24.—(1) Prior to questioning a child in conflict with the law, a police officer must explain to the child, in a manner and in language that is appropriate to the age and level of understanding of the child that—

- (a) the child is under no obligation to make or give a statement;
- (b) if the child consents to making or giving a statement, he or she may withdraw that consent and statement at any time;
- (c) any statement made or given may be used as evidence in any proceedings; and
- (d) the child is entitled to consult with, and give any statement in the presence of one or more persons under subsection (3).

(2) To the extent practicable, a child in conflict with the law must be questioned by a police officer who has received special training in child justice matters.

(3) A child in conflict with the law must be questioned in the presence of one or more of the following persons—

- (a) a parent or other adult having care of the child;

- (b) the child's legal representative;
- (c) a child justice officer, child welfare officer or community volunteer supervisor; or
- (d) any other appropriate support person, other than a police officer, nominated by the child.

(4) No oral or written statement made or given by a child in conflict with the law is admissible in evidence in any proceedings against the child unless the court is satisfied that one or more persons in subsection (3) were present at the time the oral or written statement was given.

Police conduct generally

25.—(1) The police must manage any contact between a police officer and a child in conflict with the law in such a way as to—

- (a) respect the rights of the child;
- (b) promote the well-being of the child; and
- (c) avoid harm to the child.

(2) In accordance with subsection (1), a police officer in contact with a child in conflict with the law must—

- (a) refrain from using vulgar, profane or emotionally abusive language;
- (b) refrain from acting in a way that may embarrass, shame, humiliate or degrade the child;
- (c) not apply any physical force to the child or use handcuffs or other instruments of restraint except, and to the minimum extent necessary to—
 - (i) prevent the escape of the child, where there is a serious risk that the child may attempt to escape;
 - (ii) protect the child from causing harm to himself or herself; or
 - (iii) prevent the child from causing harm to another person;
- (d) refrain from pointing, displaying or using any form of weapon;
- (e) ensure, to the extent possible, that children in the custody of the police are kept separate from adults; and
- (f) take such steps as are necessary and practicable in the circumstances to protect the child in police custody from harm, including harm caused by other adult detainees or children in conflict with the law.

(3) Any physical force used by a police officer under subsection (2)(c) must be—

- (a) reasonable and the minimum necessary in the circumstances; and
- (b) documented by a child justice officer and brought to the attention of the officer-in-charge of the police station.

Taking of fingerprints and photographs only on court order

26. The police must not take fingerprints or photographs of a child in conflict with the law in custody except through a court order.

Release by police

27.—(1) Where a child has been arrested without warrant for an offence other than murder or attempted murder and cannot be brought before a court, a police officer who has custody of the child must, as soon as practicable, inquire into the case.

(2) Subject to subsection (3), the police officer must release the child on bail and into the care and custody of a parent or other appropriate adult, with or without sureties, with a written undertaking by the parent or appropriate adult that the child will appear before the court at a time and place specified in the undertaking.

(3) A child must be released in accordance with subsection (2) unless—

- (a) the police officer believes, on reasonable grounds, that there is a substantial risk that the child may be a danger to another person if released; or
- (b) it is necessary for the child's own protection for him or her to be in custody.

(4) A child must be released on bail without sureties and without deposit of security, unless the police officer is satisfied that it would not be appropriate, in all the circumstances to do so.

(5) In determining the amount of any deposit of security, regard must be given to the ability of the child or his or her parents to pay.

(6) A child who is not released in accordance with subsection (3) must be brought before the court without delay, and not later than 24 hours after the child was arrested.

Custody of children not released after arrest

28. Where a child cannot be released in accordance with section 27, the child must, *in lieu* of detention in police custody, be placed in a remand home under section 59, if such place is available within a reasonable distance.

Children in police custody

29.—(1) A child who is arrested or detained at a police station or in the custody of a police officer must be—

- (a) kept separate from adult detainees at all times;
- (b) treated in a manner and kept in conditions which take into account his or her age, gender and any special needs;
- (c) provided with adequate food, water and bedding;
- (d) provided immediate and appropriate health care in the event of any illness or injury; and
- (e) permitted, without delay to communicate in private with—
 - (i) his or her parents, family members or other appropriate adult;

- (ii) a legal representative of his or her choice or a representative from the Legal Aid Commission; and
- (iii) a child justice officer or a child welfare officer.

(2) The Commissioner of Police must make arrangements, as far as practicable, that any child, while in police or while being conveyed to or from any court is prevented from associating with an adult who is charged with an offence other than an offence with which the child is jointly charged.

(3) The Commissioner of Police must make arrangements for ensuring, as far as practicable, where a child is a female, she is to be under the care of a female police officer while in police custody or while being conveyed to or from any court.

PART 5—PRE-TRIAL RELEASE AND REMAND OF CHILDREN IN CONFLICT WITH THE LAW

Presumption in favour of release

30.—(1) Where a child in conflict with the law who appears or is brought before a court has not been released in accordance with section 27, the court must inquire into the case and, unless the interests of justice otherwise require, release the child from custody upon entering into a written undertaking, with or without conditions, for his or her subsequent appearances before the court.

(2) Notwithstanding subsection (1), a child charged with an offence must be released from custody unless the court is satisfied on reasonable grounds as to one or more of the following considerations—

- (a) there is a substantial risk that the child is not likely to appear at his or her next court dates if released;
- (b) there is a substantial risk that the child may be a danger to any other person if he or she released; or
- (c) it is necessary for the child's own protection for him or her to be in custody.

(3) A court must release the child if the child cannot, on being found guilty, be committed to custody.

(4) A court, when deciding whether to release a child, must have regard to all relevant factors, including—

- (a) the best interests of the child;
- (b) any recommendation from a child justice officer;
- (c) the principle that a child must be detained only as a measure of last resort and for the shortest period possible;
- (d) the child's age, character, background and criminal history;
- (e) the availability of a parent, other appropriate adult, child justice officer or community volunteer supervisor to supervise the child;

- (f) the availability of appropriate remand facilities to ensure that the child is detained separately from adults in conditions that will reduce the risk of harm to the child;
- (g) the nature and seriousness of the offence;
- (h) the strength of the evidence against the child relating to the offence;
- (i) the risk that the child might be a danger to any other person; and
- (j) the likelihood that, if the child is convicted of the offence, a substantial custodial order will be imposed.

(5) The court must release a child without sureties and without deposit of money or other security, unless the court is satisfied it would be not be appropriate in all the circumstances to do so.

(6) Where a court determines that a deposit of money or other security is required, the court must, in determining the amount, have regard to the ability of the child or his or her parents to pay.

Releasing child under supervision and with condition

31.—(1) Where a child is released in accordance with section 30, the court may require, as a condition of release, one or more of the following conditions—

- (a) that the child be placed in the care of a parent or other appropriate adult who agrees to take the child into his or her care;
- (b) that the child be placed under the supervision of a child justice officer, community volunteer supervisor or other respected member of the community and be required to report to that person at such intervals as the court deems necessary;
- (c) that the child abide by a curfew;
- (d) that the child not have contact with a specified person or class of persons;
or
- (e) that the child must not be present at a specified location or be within defined areas of such location.

(2) The court, in releasing a child, must explain to the child and the parent or appropriate adult the conditions of the release and the consequences of the child's failure to comply with any such condition.

Placement of child in remand

32.—(1) A child being remanded by the court must, instead of being taken to a corrections centre, be placed in a remand home under section 59 or in such other place approved by the Minister for that purpose.

(2) A child in remand must be kept separate from children found guilty of an offence, except when participating in supervised programmes or activities.

Expediting proceedings where child in remand

33. Where a child has been remanded into custody, the court must take such steps as are reasonably practicable to expedite the completion of the proceeding to minimise the length of time the child must spend in custody.

PART 6—CHILD JUSTICE COURT

Establishment of Child Justice Court

34.—(1) The Chief Justice may, by notice in the Gazette, establish a Child Justice Court in and for an area specified in the notice.

(2) The Chief Magistrate may designate as Child Justice Magistrates, such Magistrates as in his or her opinion, have the necessary qualifications, training and experience to be so appointed.

(3) A Child Justice Court must sit as often as may be necessary for the purpose of exercising any jurisdiction conferred on it by this or any other written law and must, so far as practicable—

- (a) sit at a different time or at a different place from the usual time or place for sittings of the court relating to criminal matters;
- (b) conduct proceedings in a room that is furnished and designed in a manner aimed at putting children at ease and protecting their well-being; and
- (c) take steps to reduce contact between the child and the public, and with adult offenders appearing before any other court.

(4) No person is to be present at any sitting of the Child Justice Court except—

- (a) members and officers of the court;
- (b) parties to the case before the court, and witnesses and other persons, including child justice officers and welfare officers directly concerned in that case; and
- (c) such other persons as the court may authorise to be present.

(5) A Magistrates Court may exercise the jurisdiction conferred by this Act on a Child Justice Court, where—

- (a) no Child Justice Court has been established in an area;
- (b) a Child Justice Magistrate has not been designated or is absent from duty;
or
- (c) it is impracticable for a child to be brought before a Child Justice Court.

Rules

35.—(1) The Chief Justice may make rules of court for regulating the practice and procedures under this Act.

(2) Any written law which regulates procedure and appeals in criminal cases has effect subject to this Act and of any rules made under subsection (1).

Jurisdiction of Child Justice Court

36.—(1) Notwithstanding any other written law, any criminal charge brought against a child in conflict with the law must, subject to subsection (2) and section 37, be laid in and disposed of by a Child Justice Court.

(2) Where a child in conflict with the law is charged with murder or attempted murder—

- (a) the charge must be disposed of in the High Court; and
- (b) the High Court must conduct proceedings in accordance with this Act.

(3) Where in any proceedings under this Act, a court determines that at the time a person is alleged to have committed an offence, that person—

- (a) was 18 years of age or older, the court must transfer the proceedings to a Magistrates Court or the High Court, as the case requires; or
- (b) was under the age of 14 years, the court must discharge him or her.

Separation and joinder of trials involving children in conflict with the law and adults

37.—(1) Where a child in conflict with the law has been jointly charged with an adult, the child must be tried separately from the adult, unless it is in the interests of justice to join the trials.

(2) An application for such joinder must be made to the Child Justice Court in which the child is to appear.

(3) Where a Child Justice Court grants an application for joinder under this section, the court may direct that the proceedings be heard in the Child Justice Court or the court with jurisdiction over the adult co-accused, as the Child Justice Magistrate thinks fit.

(4) Where the matter is transferred to a court other than a Child Justice Court, the court must afford the child concerned all benefits conferred on such child by this Act.

First appearance inquiry

38.—(1) At a child in conflict with the law's first appearance before a court, and prior to taking a plea from the child, the court must—

- (a) explain to the child, in a language he or she understands, the nature of the allegations against him or her;
- (b) if the child is not legally represented, explain to the child and the parent or an appropriate adult, as the case may be, of the child's right to legal representation and the availability of free legal aid by the Legal Aid Commission;
- (c) make a determination as to the child's age, in accordance with section 6;
- (d) inquire as to treatment the child has received, and whether his or her rights under this Act or any other written law have been complied with;
- (e) make a determination as to whether diversion is appropriate in accordance with section 13; and

- (f) if the child has not been released in accordance with section 27, determine whether to release the child in accordance with section 30.

(2) An inquiry under subsection (1) may be conducted informally by asking questions or eliciting information from the child, the child's parents, the public prosecutor or any other person the court deems relevant.

Court may divert matter

39.—(1) At a first court appearance under section 38, the court may, on being satisfied that the child in conflict with the law acknowledges responsibility for the offence, and without recording a conviction, adjourn proceedings for a period of up to 6 months and release the child upon the child giving an undertaking to comply with specified conditions.

(2) An undertaking under subsection (1) may require that the child—

- (a) comply with one or more of the conditions specified in section 14(3), and any other special conditions imposed by the court; and
- (b) appear before the court if called on to do so during the period of the adjournment, and if the court so specifies, at the time to which the further hearing is adjourned.

(3) In determining what conditions to impose as part of an undertaking, a court may order a community conference to be convened by a child justice officer, a child welfare officer or a traditional or community leader to provide recommendations.

(4) If at the time to which the further hearing of a proceeding is adjourned the court is satisfied that the child has observed the conditions of the undertaking, the court must discharge the child without any further hearing of the proceeding.

(5) A discharge under subsection (4) may be made in the absence of the child.

(6) If a child fails to comply with the conditions applying to an undertaking given under subsection (1), the court may, upon being notified of such failure, issue a summons to the child to appear before the court and may—

- (a) vary the conditions of the undertaking or impose different conditions; or
- (b) set the matter down for plea and, if applicable, trial.

Referral of child to care and protection hearing

40.—(1) If it appears during the course of any proceedings under this Act that the child is a child in need of care and protection as defined under the Child Care and Protection Act 2024 and that it is desirable to deal with the child under the Child Care and Protection Act 2024, the court may suspend the proceedings and order that the matter be referred to the Family Division for a child care and protection hearing.

(2) Without limiting subsection (1), referral of a matter to the Family Division may be considered if a child—

- (a) is alleged to have committed an offence to meet the child's basic need for food and shelter;

- (b) is allegedly abusing a dependence-producing substance; or
- (c) does not live at his or her family home or in appropriate substitute care.

Conduct of court proceedings generally

41.—(1) In proceedings before a court in which a child is charged with an offence, the proceedings must with due regard to the child’s procedural rights, be conducted in an informal manner to encourage maximum participation by the child.

- (2) Without limiting subsection (1), the court must—
 - (a) conduct proceedings with as little formality as the circumstances of the case permit;
 - (b) explain to the child, in language he or she understands, the nature of the allegations against him or her, his or her rights, the procedures of the court, and the consequences of any order that is made;
 - (c) ensure that the proceedings are fair; and
 - (d) ensure that all questions put to the child are not unduly hostile and are phrased in language appropriate to the age and understanding of the child.

(3) Notwithstanding that the child admits to having committed the offence, a court may, in any case where the child is not legally represented, hear such evidence as it considers necessary in the best interests of the child and in the interests of justice.

(4) A plea of guilty must be vacated and a plea of not guilty entered on behalf of the child and the matter adjourned to a date for trial where at any stage after a plea of guilty has been entered, and before a final order has been passed—

- (a) the child alleges a defence or claims he or she is not guilty; or
- (b) it appears to the court that a defence has been raised.

Presence of parents

42.—(1) Where a child in conflict with the law is brought before the court, his or her parents may in any case, and must if the parent resides within a reasonable distance, be required to attend the court before which the case is heard during all stages of the proceedings.

(2) Subsection (1) does not apply where the court is satisfied that it would be unreasonable or not in the best interests of the child to require the parent’s attendance or if the parent cannot be found.

(3) If a parent does not attend proceedings held before a court in respect of a child, the court may, if in its opinion the presence of the parent is necessary or in the best interests of the child, summon the parent to attend.

(4) If a parent fails to appear before the court when summoned to do so, the court may issue a warrant of arrest to produce the parent before the court.

Legal representation

43.—(1) A child in conflict with the law is entitled, at all stages of the proceedings, to have legal representation.

(2) Where a child appears before the court without legal representation, the court must—

- (a) advise the child of his or her right to obtain free legal advice and assistance from the Legal Aid Commission; and
- (b) adjourn the proceedings to give the child reasonable opportunity to obtain legal advice and legal representation.

(3) If, following an adjournment under subsection (2) a child appears without legal representation, the court must direct the Legal Aid Commission to appoint a legal representative for the child.

Time limits for conclusion of proceedings

44. A court must conclude the proceedings of a child in conflict with the law as expeditiously as possible and must ensure that adjournments are limited in number and duration.

Appeals

45. An appeal by a child in conflict with the law against a conviction or sentence under this Act is governed, with necessary modifications, by the Criminal Procedure Act 2009 and any other written law.

PART 7—METHODS OF DEALING WITH CHILDREN

Child dealt with under this Part

46.—(1) A court that has found a child in conflict with the law guilty of an offence must impose an order on the child in accordance with this Part.

(2) Subsection (1) applies notwithstanding any other written law.

Purpose and principles

47.—(1) The purposes for imposing an order under this Part on a child in conflict with the law are to—

- (a) encourage the child to understand the consequences of and be accountable for the harm caused by his or her actions;
- (b) reinforce the child’s respect for societal values, customs and traditions;
- (c) promote an individualised response which is appropriate to the child’s circumstances and proportionate to the circumstances of the offence;
- (d) ensure protection of the public; and
- (e) ensure that the child receives any necessary supervision, guidance, treatment or services to support his or her rehabilitation and reintegration.

(2) A court that imposes an order on a child in conflict with the law must determine what order to impose in accordance with the principles set out in section 4 and the

following principles—

- (a) the order must be proportionate to the seriousness of the offence and the degree of responsibility of the child for that offence;
- (b) a child's age is a mitigating factor, and any response to an offence committed by a child must have regard to the child's level of maturity and limited capacity to appreciate the consequences of his or her actions;
- (c) a court may not impose a more serious order unless it is satisfied that a lesser or alternative order will not meet the purposes under in subsection (1); and
- (d) custody must be used only as a measure of last resort, for the shortest period necessary to achieve the purposes set out in subsection (1).

(3) In determining what order to impose on a child in conflict with the law, the court must take into account—

- (a) the age, maturity, education, health, character and attitude of the child;
- (b) the nature and seriousness of the offence and the circumstances in which it was committed;
- (c) the degree of participation of the child in the commission of the offence;
- (d) the harm done to a victim and whether it was intentional or reasonably foreseeable;
- (e) the child's history in respect of offences and his or her responses to any previous orders in relation to those offences;
- (f) the community services available to assist the child and his or her willingness to use those services;
- (g) any information about the child, including a social inquiry report, provided to assist the court in making a determination;
- (h) any proposals that the child, his or her parents or a traditional or community leader may put forward for the future improvement of the child, including the outcome of any community conference arranged in accordance with section 49;
- (i) any reconciliation process or reparation made;
- (j) any time spent in custody in relation to the offence; and
- (k) any aggravating and mitigating circumstance related to the child or the offence that the court may consider relevant.

(4) In determining what order to impose on a child in conflict with the law, the court is not, having regard to the need for an individualised approach to children, strictly bound by precedent or by any guidelines relating to the sentencing of adults.

Social inquiry report

48.—(1) Subject to subsection (7), where a child in conflict with the law acknowledges committing an offence or where a court has found that an offence has been proved against a child, the court must, before imposing an order, order a child justice officer to prepare a social inquiry report in respect of the child.

(2) The child justice officer must complete the social inquiry report as soon as practicable, but not later than 21 days following the date upon which such report was ordered.

(3) A social inquiry report must contain all information relevant to assist the court in determining the most suitable method of dealing with the child, including—

- (a) information with respect to the maturity, behaviour and attitude of the child;
- (b) the child's background, home environment, education and employment history, criminal record, future plans and relationship to his or her community;
- (c) the relationship between the child and his or her parents and extended family;
- (d) to the extent that it is feasible, the views of the victim, the child's parents, and traditional or community leaders;
- (e) any plans put forward by the child or his or her parents or family to address the child's behaviour;
- (f) the outcome of any community conference arranged in accordance with section 49;
- (g) the availability and appropriateness of community-based services for the care, supervision, rehabilitation and reintegration of the child and the willingness of the child to avail himself or herself to those services; and
- (h) a recommendation as to the most appropriate order to be imposed on the child.

(4) If a social inquiry report cannot reasonably be committed to writing, it may, with leave of the court, be submitted orally in court.

(5) If a social inquiry is submitted to the court in writing, the court must cause a copy of the report to be given to—

- (a) the child and explained to him or her in the language he or she understands;
- (b) a parent of the child who is in attendance at the proceedings;
- (c) a legal representative representing the child; and
- (d) the public prosecutor.

(6) The child in conflict with the law, his or her legal representative or the public prosecutor may, on application to the court, be given the opportunity to cross-examine the child justice officer who made the report on the contents of the report.

(7) Notwithstanding subsection (8), where, in the opinion of the court, the preparation of a social inquiry report would cause undue delay to the prejudice of the child in conflict with the law, the court may dispense with the requirement for a social inquiry report.

(8) The court must not order a period of custody unless a social inquiry report has first been obtained.

Referral to community conference for recommendations

49.—(1) The court may, before imposing an order on a child in conflict with the law, direct a child justice officer to convene a community conference for the purpose of making recommendations to the court on an appropriate order.

(2) Where no child justice officer is available, the court may request that a traditional or community leader convene a community conference.

(3) The community conference must be carried out in accordance with section 15, with such changes as the context requires.

(4) Upon receipt of the recommendations from a community conference, the court may—

- (a) confirm the recommendations through an order; or
- (b) substitute or amend the recommendations through an order.

(5) If the court does not agree with the recommendations made at a community conference and imposes an order which differs in a material respect from the recommendations at the community conference, the court must note on the record of the proceedings the reasons for deviating from the recommendations.

Methods of dealing with children in conflict with the law

50. Where a court finds a child in conflict with the law guilty of an offence, the court must, after considering the methods of dealing with children under this Part, make any one or more of the following orders—

- (a) dismiss the charge;
- (b) discharge the child, with or without conditions;
- (c) reprimand the child;
- (d) make a good behaviour order for a period not exceeding 12 months, requiring the child to abide by an agreement to comply with certain standards of behaviour;
- (e) order the child to make restitution to any other person, including the return of any item taken or repair of any damage done;

- (f) subject to the consent of a victim, order that the child make amends by performing specified tasks for the victim, at the time and on the terms that the court may determine;
- (g) order the child to report to a specified person, agency or organisation for counselling, on such terms as the court may determine;
- (h) make a guidance order for a period not exceeding 12 months, placing the child under the supervision and guidance of a specified person in order to monitor and guide the child’s behaviour;
- (i) order the child to attend school, vocational training or rehabilitation programmes approved by the Director, on such terms as the court may determine;
- (j) subject to section 52, order the child to perform community work for a maximum period of up to 100 hours and to be completed within a maximum period of 12 months;
- (k) subject to section 53, make a community-based corrections order for a specified period of not less than 6 months and not more than 2 years;
- (l) subject to section 53, make an intensive community-based corrections order for a specified period, not exceeding 2 years; or
- (m) order a period of custody in an approved rehabilitation centre—
 - (i) if the order is made by a Child Justice Court, for a period not exceeding 2 years; or
 - (ii) if the order is made by the High Court, for a period not exceeding 10 years.

Child in conflict with the law entitled to explanation of order

51. Where the court issues an order against a child in conflict with the law for an offence, the court must—

- (a) state its reasons for the order in the record of the proceedings; and
- (b) take steps to ensure that the child and his or her parents understand—
 - (i) the purpose and effect of the order; and
 - (ii) the consequences, if any, that may follow if the child fails to comply with the order.

Limits on community work

52.—(1) A court must not impose a community work order on a child in conflict with the law unless—

- (a) the child consents; and

- (b) the court is satisfied that—
 - (i) the child is a suitable person, having regard to his or her age and level of development, to perform community work;
 - (ii) suitable community work is available for the child to perform; and
 - (iii) there exist satisfactory arrangements for the supervision of the child's performance of the community work.

(2) In addition to the requirements set out in the Community Work Act 1994, any community work required to be performed by a child in conflict with the law must—

- (a) take into account the age and capacity of the child;
- (b) not interfere with the child's normal hours of education or employment;
- (c) not be hazardous to the child's health or mental or physical development;
- (d) not expose the child to danger, harm, public ridicule or humiliation; and
- (e) not exceed 4 hours in any one day and 5 days in any one week.

Conditions relating to community-based corrections orders

53.—(1) A community-based corrections order or intensive community-based corrections order—

- (a) must impose the standard conditions required under section 13 of the Community-Based Corrections Act 2018; and
- (b) may, in addition to any of the special conditions under section 14 of the Community-Based Corrections Act 2018, impose the following special conditions—
 - (i) that the child reside with a parent or other appropriate adult who agrees to take responsibility for the care and supervision of the child;
 - (ii) that the child attends a specified school or place of learning during a specified period of time;
 - (iii) that the child not associate with any specified person, or with persons of any specified class, with whom the child justice officer or community-based corrections officer has, in writing, warned the child not to associate with; or
 - (iv) any other condition that the court thinks fit to promote the child's rehabilitation and reintegration.

(2) Where a child is made subject to a community-based corrections order or intensive community-based corrections order, the child justice officer must ensure that if the child requires support, he or she has access to adequate social work services, counselling, rehabilitation, educational and other support.

Restrictions on use of custodial orders

54.—(1) A court must not impose a custodial order on a child in conflict with the law in accordance with section 50, unless the court has considered all alternatives under this Act and has determined that—

- (a) there is no reasonable alternative or combination of alternatives, that is in accordance with the purpose and principles set out in this Part; and
- (b) a custodial order is justified by—
 - (i) the seriousness of the offence, the need for the protection of the community and the severity of the impact of the offence on the victim; or
 - (ii) the previous failure of the child to respond to a non-custodial order.

(2) If a court imposes a custodial order on a child, the court must state the reasons why it has determined that a non-custodial order is not adequate to achieve the purpose and principles set out in section 47.

(3) Where an order of custody exceeds a period of 2 years, the order must be subject to a custody review in accordance with section 62 .

Placement of children subject to a custodial order

55.—(1) A child in conflict with the law ordered to be held in custody for any period must be committed to a rehabilitation centre approved under section 58.

(2) No child in conflict with the law is to be subject to imprisonment or committed to a corrections centre for adults.

(3) Where a child serving a custodial order is in a rehabilitation centre when he or she attains the age of 18 years, the must be brought before the court for a direction as to whether it is in his or her best interests and in the public interest—

- (a) to serve the remainder of his or her custodial order or any specified portion of that order, in the rehabilitation centre; or
- (b) to be transferred to an adult corrections centre.

(4) A determination under subsection (3) must be carried out in accordance with section 6, with such changes as the context requires.

(5) When a person found guilty in accordance with this Act is 21 years of age or older at the time a custodial order is imposed on him or her, the person must be committed to a corrections centre for adults to serve the custodial order.

Prohibition of certain forms of punishment

56.—(1) Notwithstanding any other written law, a child must not be subject to a fine, corporal punishment or life imprisonment.

(2) No child is to be ordered to imprisonment for an offence or to be committed to a corrections centre in default of payment of a fine, damages or costs.

PART 8—CUSTODIAL FACILITIES FOR CHILDREN

Purpose of custodial facilities

57. Custodial facilities must, in accordance with section 58, be set aside for children, for the purposes of—

- (a) carrying out orders imposed by the courts for the safe, fair and humane custody and supervision of children; and
- (b) assisting children to be rehabilitated and reintegrated into the community as law-abiding citizens by providing them with effective programmes and services.

Approval of custodial facilities

58.—(1) The Minister may, by notice in the Gazette, approve any premises or a part of any premises to be—

- (a) a remand home; or
- (b) a rehabilitation centre.

(2) The Director is responsible for the welfare of all children held in custody in any facility approved under this Part.

(3) A child must not be detained in any institution other than any premises or a part of any premises approved under this Part.

Remand homes

59. A remand home must be used for the reception and remand of a child in conflict with the law—

- (a) in accordance with section 28;
- (b) when remanded in custody while awaiting appearance in a court for any reason; or
- (c) while awaiting placement in a rehabilitation centre.

Rehabilitation centres for children

60. A rehabilitation centre is to be used for the care, custody, rehabilitation and reintegration of a child in conflict with the law who has been found guilty of an offence and is subject to a custody order.

Children in custody

61.—(1) In addition to any other entitlement specified in any written law, a child in conflict with the law remanded in a remand home or committed to a rehabilitation centre is entitled to—

- (a) be accommodated in facilities that meet the standards of health, hygiene, human dignity and climatic conditions;
- (b) food that is appropriate and adequate to ensure a well-balanced diet and in sufficient quantities to maintain his or her health and well-being;

- (c) adequate sanitary arrangements to enable him or her to comply with the needs of nature when necessary and in a clean and decent manner;
- (d) adequate bathing installations and supplies;
- (e) be issued clothing suitable to the climate;
- (f) daily free time for leisure activities, including daily free exercise in the open air whenever the weather permits;
- (g) medical treatment as required;
- (h) practice his or her own religion;
- (i) receive visits from and communicate with family members;
- (j) have unrestricted, private visits from a legal representative;
- (k) continue his or her education, where practicable in the community;
- (l) benefit from rehabilitation and vocational training programmes;
- (m) leave the remand home or rehabilitation centre subject to any reasonable conditions that may be imposed, for a specified period—
 - (i) to visit family;
 - (ii) to attend any place for educational or training purposes;
 - (iii) to participate in paid or unpaid employment;
 - (iv) to attend any place for a medical examination or treatment;
 - (v) to take part in sport, recreation or entertainment in the community; or
 - (vi) for any other purpose that the head of the facility considers will assist in the child’s rehabilitation and reintegration into the community; and
- (n) be held separate at all times from any adult who is detained or held in custody.

(2) The Director may enter into agreements with civil society organisations, faith-based groups, traditional community leaders, and the private sector to support programmes and services for children in remand homes and rehabilitation centres.

Periodic review

62.—(1) Where a child in conflict with the law is committed to custody for a period exceeding 2 years, the Director must cause the child to be brought before the court without delay intervals not exceeding 2 years or such lesser period as the court orders, for the court to review the order.

(2) If a child eligible for a review has not been brought before the court in accordance with subsection (1), the child, the child’s parent, the child’s legal representative or the Director may make an application to the court for the child to be brought to court for the order to be reviewed.

(3) In conducting a review under subsection (1), the court may, after giving the child, the child's parents, the child's legal representative, the public prosecutor and the Director an opportunity to be heard, and having regard to the needs of the child and the interests of society —

- (a) confirm the order; or
- (b) release the child from custody and place the child under the supervision of a child justice officer for a period not exceeding the remainder of the order that the child is then serving.

(4) A child who is subject to a review under this section is entitled to legal representation.

(5) Upon application by the child, the child's parent, the child's legal representative or the Director, an order imposed in respect of a child may be varied on the following grounds —

- (a) that the child has made sufficient progress to justify a change in the order;
- (b) that the circumstances that led to the order have changed materially;
- (c) that new services or programmes are available that were not available at the time the order was first issued;
- (d) that the opportunities for rehabilitation are now greater in the community; or
- (e) any other ground that the court considers appropriate.

(6) Where a review is conducted in accordance with this section, the Director must submit to the court a progress report on the performance of the child since the order took effect, and section 48 applies, with any modification that the circumstances require, in respect of progress reports.

Absconders

63.—(1) A child in conflict with the law who escapes from a remand home or rehabilitation centre in whose care he or she has been placed, or who at the expiry of any temporary leave of absence from the remand home or rehabilitation centre, fails to return by the due date, may be apprehended without a warrant and brought back to that remand home or rehabilitation centre.

(2) A child apprehended in accordance with subsection (1) may —

- (a) be dealt with in accordance with the internal disciplinary procedures of the remand home or rehabilitation centre from which he or she escaped; or
- (b) be charged with escaping lawful custody contrary to section 196 of the Crimes Act 2009.

(3) A person commits a summary offence and is liable on conviction to a fine not exceeding \$5,000 or imprisonment for a term not exceeding 2 years or both, if the person —

- (a) knowingly assists or attempts to induce, or does induce, a child to run away from a remand home or rehabilitation centre;

- (b) induces a child who is temporarily on leave of absence from a remand home or rehabilitation centre not to return to that remand home or rehabilitation centre at the expiry of such leave of absence, or prevents the child from returning; or
- (c) harbours or conceals a child who has run away or failed to return upon the expiry of his or her temporary leave of absence.

Reintegration into the family or community

64.—(1) A child in conflict with the law who has been discharged from custody is entitled to receive support that would promote and assist his or her reintegration into the family or community.

(2) Not less than 14 days prior to the discharge of a child, other than a child on remand, the head of the rehabilitation centre must notify the Director so that arrangements may be made for the child's return and reintegration into his or her family or community.

(3) A notice made under subsection (2) must include a report containing the following information—

- (a) the child's personal details, including the contact information of his or her parents;
 - (b) the child's attitude and behaviour while in the rehabilitation centre;
 - (c) details of any rehabilitation programmes undertaken by the child while in the rehabilitation centre;
 - (d) details, including certificates, of any educational programmes that the child participated in; and
 - (e) details of any vocational skills or work experience acquired by the child while in the rehabilitation centre.
- (4) The Director must ensure that—
- (a) a reintegration plan is developed for each child prior to his or her discharge from custody;
 - (b) appropriate measures are taken to prepare the child for his or her discharge and to prepare the child's family and community to receive the child; and
 - (c) the child receives appropriate assistance to return home and reintegrate into his or her family or community.

PART 9—RECORDS AND PRIVACY

Restriction of publication of proceedings

65.—(1) A person must not publish or make public information that has the effect of identifying a child who is dealt with under this Act.

(2) A person who contravenes this section commits a summary offence and is liable on conviction to a fine not exceeding—

- (a) in the case of an individual, \$5,000; or
- (b) in the case of a body corporate, \$15,000.

Criminal records

66.—(1) Notwithstanding any written law, a finding of guilt in relation to a child must not be taken into consideration for any purpose, and a person must not disclose or communicate to any other person any information that discloses the fact that a child has been found guilty of an offence, other than for the purposes of—

- (a) appeals against an order;
- (b) proceedings for variation or breach of an order; and
- (c) proceedings against the child for a subsequent offence.

(2) Any finding of guilt made in respect a child under this Act must not be used in subsequent proceedings for cases involving the same offender as an adult.

Confidentiality of records

67.—(1) Where a court, department or an agency dealing with a child under this Act maintains records, those records must be considered privileged and confidential if obtained—

- (a) for the purposes of an investigation of an offence alleged to have been committed by a child;
- (b) as a result of the use of a diversion plan to deal with a child;
- (c) for use in proceedings against a child under this Act; or
- (d) for the purpose of administering an order of the court under this Act.

(2) No person is to be given access to a record kept under subsection (1) and no information contained in it may be given to any person, where to do so would identify the child to whom it relates, as a child dealt with under this Act.

(3) Subsection (2) does not apply where access is authorised or required for the purposes of carrying out proceedings under this Act or any other written law.

PART 10—MISCELLANEOUS

Regulations

68. The Minister may make regulations to prescribe matters that are required or permitted by this Act to be prescribed or are necessary or convenient to be prescribed for carrying out or giving effect to this Act and generally for achieving the purposes of this Act including—

- (a) minimum standards for diversion, rehabilitation and reintegration services;
- (b) procedures for the conduct of community conferences;

- (c) standards for the management and inspection of remand homes and rehabilitation centres;
- (d) terms and conditions for the registration of agencies and organisations providing services to children in conflict with the law;
- (e) the qualification and training of convenors for the conduct of community conferences convened under this Act; and
- (f) prescribing penalties for any offence in any regulations to a fine not exceeding \$1,000 or to a term of imprisonment not exceeding 2 years or both.

Repeal

69. Parts 1 to 5 and Parts 13 to 16 of the Juveniles Act 1973 are repealed.

Savings

70.—(1) Nothing in this Act affects the validity of any court proceedings commenced or conducted in accordance with the repealed provisions of the Juveniles Act 1973, prior to the commencement of this Act.

(2) Nothing in this Act affects the validity of any order of any court made under the repealed provisions of the Juveniles Act 1973 prior to the commencement of this Act, and all such orders must be carried out in accordance with the repealed provisions of the Juveniles Act 1973.

(3) No aspect of a court proceeding and no procedure used to enforce any order under this Act is invalid by reason of the use of forms and processes applying to the proceedings or the enforcement of order prior to the commencement of this Act, unless a regulation or rule made under this Act requires the use of other forms or processes.

Transitional

71.—(1) A court hearing any proceedings which was commenced prior to the commencement of this Act must apply the repealed provisions of the Juveniles Act 1973 if no judgment has been made in the case and no order has been imposed prior to the commencement of this Act.

(2) On the hearing of any appeal against a conviction or order imposed by a court under the repealed provisions of the Juveniles Act 1973 prior to the commencement of this Act, the court hearing the appeal must, as far as is practicable in the circumstances, give effect to the repealed provisions of the Juveniles Act 1973.

(3) A person operating an agency or organisation that provides non-residential programmes or services for the education, rehabilitation and vocational training of children with conflict of the law must within 90 days from the commencement of this Act, register the agency or organisation in accordance with this Act.

Consequential amendments

72. The laws listed in the Schedule are amended as set out in that schedule.

SCHEDULE
(Section 72)

CONSEQUENTIAL AMENDMENTS

Adoption of Infants Act 1944

1. The Adoption of Infants Act 1944 is amended by—
 - (a) in section 13(3), deleting “Juveniles Act 1973” and substituting “Child Justice Act 2024”; and
 - (b) in section 17(3), deleting “juvenile court as defined by the Juveniles Act 1973” and substituting “Child Justice Court as defined by the Child Justice Act 2024”.

Crimes Act 2009

2. The Crimes Act 2009 is amended by—
 - (a) in section 26, deleting “10” wherever it appears and substituting “14”; and
 - (b) deleting section 27.

Criminal Procedure Act 2009

3. The Criminal Procedure Act 2009 is amended by—
 - (a) in section 2, deleting the definition of “juvenile” and substituting the following definition—

““child in conflict with the law” has the meaning given in section 2 of the Child Justice Act 2024;”;
 - (b) in section 3(2)(a), deleting “juveniles” and substituting “children in conflict with the law”; and
 - (c) in section 76(4)(b), deleting “juvenile” and substituting “child in conflict with the law”.

Corrections Service Act 2006

4. The Corrections Service Act 2006 is amended in section 54(2)(d)(v) by deleting “juveniles” and substituting “children in conflict with the law”.

Domestic Violence Act 2009

5. The Domestic Violence Act 2009 is amended by—
 - (a) in section 8(1)(d), deleting “Juvenile Court” and substituting “Child Justice Court”;
 - (b) in section 72(2), deleting “Juvenile Court” wherever it appears and substituting “Child Justice Court”; and
 - (c) in the Schedule, deleting “Juvenile Court” wherever it appears and substituting “Child Justice Court”.

Fiji National Provident Fund Act 2011

6. The Fiji National Provident Fund Act 2011 is amended in section 4 in the definition of “exempt employee” in paragraph (a)(iii) by deleting “is detained in a prison, approved school under the Juveniles Act 1973” and substituting “is detained in a remand home or rehabilitation centre approved under the Child Justice Act 2024”.

Registration of Sex Offenders Act 2021

7. The Registration of Sex Offenders Act 2021 is amended by—

(a) in section 2—

(i) deleting the definition of “juvenile” and substituting the following definition—

““child in conflict with the law” has the meaning given in section 2 of the Child Justice Act 2024;”; and

(ii) in the definition of “welfare officer” deleting “Juveniles Act 1973” and substituting “Child Justice Act 2024”; and

(b) in section 9, deleting “juvenile” and substituting “child in conflict with the law”.

Rehabilitation of Offenders (Irrelevant Convictions) Act 1997

8. The Rehabilitation of Offenders (Irrelevant Convictions) Act 1997 is amended in section 5(1)(b) by—

(a) in subparagraph (i), deleting “under section 30 or 31 of the Juveniles Act 1973” and substituting “under section 50 of the Child Justice Act 2024”; and

(b) in subparagraph (ii), deleting “under section 31 of the Juveniles Act 1973” and substituting “under section 50 of the Child Justice Act 2024”.

Sentencing and Penalties Act 2009

9. The Sentencing and Penalties Act 2009 is amended by—

(a) in section 3(2), deleting “Juveniles Act 1973” and substituting “Child Justice Act 2024”; and

(b) in section 48(1)(a), deleting “17” and substituting “18”.

Adoption of Infants (Magistrates Court) Rules 1946

10. The Adoption of Infants (Magistrates Court) Rules 1946 is amended by—

(a) in rule 9, deleting “section 17 of the Juveniles Act 1973, in regard to the holding of juvenile court” and substituting “section 34 of the Child Justice Act 2024, in regard to the holding of Child Justice Court”;

(b) in rule 14(2), deleting “juvenile court” and substituting “Child Justice Court”;

(c) in rule 15(1), deleting “juvenile court” and substituting “Child Justice Court”; and

(d) in the Schedule, deleting “Juvenile Court” wherever it appears and substituting “Child Justice Court”.

Commissioner’s Orders 2011

11. The Commissioner’s Orders 2011 is amended in the Schedule to Order No 023 by deleting “juvenile” wherever it appears and substituting “child in conflict with the law”.

May 2024

CHILD JUSTICE BILL 2024

EXPLANATORY NOTE

(This note is not part of the Bill and is intended only to indicate its general effect)

1.0 BACKGROUND

- 1.1 The Juveniles Act 1973 (**‘Act’**) commenced on 13 June 1974, and while it has been amended through the years, the Act has not been substantially reviewed and revised and as such, does not fully reflect advances Fiji has made in developing the child justice system.
- 1.2 The Act adopted the British approach to juvenile justice that effectively applied the same approach to both juvenile delinquents and children in need of protection. Furthermore, it has also been noted that certain provisions of the Act are not in line with Fiji’s obligations under the Convention on the Rights of the Child (**‘CRC’**) which Fiji ratified in 1993 and which seeks to protect the interests and rights of children.
- 1.3 Therefore the Child Justice Bill 2024 (**‘Bill’**), seeks to repeal the provisions of the Act that deal with children in conflict with the law (formerly known as juveniles). The Bill provides a more comprehensive framework for the special treatment of children at all stages of the child justice process, from the point of their initial contact with the police through to trial, rehabilitation and reintegration into the community and to their families.
- 1.4 The Bill acknowledges the important role that parents, extended family, traditional and community leaders, faith-based organisations and Non-Government Organisations can play in children’s rehabilitation and reintegration. The Bill also ensures Fiji’s compliance with our obligations under Article 40 of the CRC, in relation to the administration of juvenile justice, through the following:
 - (a) replaces the term “juvenile” with “child in conflict with the law” as the stigma attached to the use of the term “juvenile” is detrimental to the rehabilitation of an offender who is a child;

- (b) introduces new objectives and guiding principles that require a balanced approach, ensuring that children in conflict with the law are held accountable for their actions as well as supporting their rehabilitation and reintegration into society;
- (c) raises the minimum age of criminal responsibility from 10 years to 14 years;
- (d) contains new provisions on diversion, allowing a police officer in consultation with a child justice officer or a public prosecutor to deal with an offence committed by a child through cautions, a diversion plan or referral to a restorative justice process such as a community conference, without sending the child to court;
- (e) the introduction of an option for the Child Justice Court to refer a matter to a community conference for recommendations on sentencing; and
- (f) provisions on reintegration of children into the community after their release.

2.0 CLAUSES

- 2.1 Clause 1 of the Bill provides for the short title and commencement. If passed by Parliament, the new legislation comes into force on a date or dates appointed by the Minister by notice in the Gazette.
- 2.2 Clause 2 of the Bill provides for the interpretation of terms used throughout the Bill.
- 2.3 Clause 3 of the Bill provides for the objectives of the Bill which includes the establishment of a child justice system that is designed to reduce offending and re-offending while holding children in conflict with the law accountable for their actions, providing for specialised treatment of children at all stages of criminal proceedings, preventing children from being exposed to the adverse effects of the formal criminal justice system and promoting involvement of families and the wider community in the rehabilitation and reintegration of children.
- 2.4 Clause 4 of the Bill provides for the principles that a court or a person exercising a function under the Bill must be guided by when performing any function under the Bill. These include ensuring that the best interests of the child remains the primary consideration in action taken in relation to children, that children must be provided with the opportunity to participate in proceedings that will affect them, expediting procedures taken in relation to children and so forth.
- 2.5 Clause 5 of the Bill provides for the application of the Bill and that children under the age of 14 years cannot be held criminally liable for the commission of an offence.

- 2.6 Clause 6 of the Bill makes provision for the determination of a person's age who is alleged to have committed an offence, and where there is doubt as to whether the person is under the age of 18 years.
- 2.7 Clause 7 of the Bill abolishes the words "conviction" and "sentence" in relation to children in conflict with the law.
- 2.8 Clause 8 of the Bill provides for the powers and duties of the Director of the Department of Children (**'Director'**) and these include encouraging a collaborative and multi-sectoral approach in the development of diversion, rehabilitation and reintegration services for children, developing training programmes for the training of child justice officers, community-based corrections officers and community volunteer supervisors. This provision also mandates the Director to monitor and assess the services provided in the Bill and provided by other organisations, groups and individuals.
- 2.9 Clause 9 of the Bill makes provisions to allow for the Director to delegate his or her powers to any officer of the Department of Children and to also revoke this delegation of power at any time such delegation revocation must be made in writing.
- 2.10 Clause 10 of the Bill provides for the duties of child justice officers who will be empowered to *inter alia* conduct timely assessments of a child's background and circumstances, provide advice and recommendations where requested in relation to diversion, bail and orders for the finding of guilt of a child.
- 2.11 Clause 11 of the Bill establishes the Register of Approved Child Justice Agencies and Organisations which is to be maintained and kept by the Director. This provision also provides for the process of registration of approved agencies and the circumstances that would necessitate the removal of the mentioned agencies.
- 2.12 Clause 12 of the Bill provides for the objectives of diversion which in principle is to deal with children outside the formal criminal justice system.
- 2.13 Clause 13 of the Bill makes provisions for children who may be considered for diversion and the persons who may divert a child. The provision also provides the circumstances where diversion may not be considered such as where a child denies participation or involvement in the commission of an offence or where the child expressly wishes to have his or her matter dealt with by a court.
- 2.14 Clause 14 of the Bill makes provisions for diversion plans and that a diversion plan must be agreed to and signed by the child and his or her parents, be appropriate to the age and maturity of the child amongst other things be proportionate to the offence. The provision also provides that diversion plans may include conditions such as the issuance of an oral or written apology, regular attendance at school, supervision by an appropriate adult and so forth.

- 2.15 Clause 15 of the Bill allows for the referral to a community conference for the purpose of developing a diversion plan and includes the classes of people who may be present once a community conference is covered.
- 2.16 Clause 16 of the Bill provides for the effect of a diversion plan, that is, if successfully completed, no other action will be taken against the child in respect of the offence to which the diversion plan relates.
- 2.17 Clause 17 of the Bill makes provisions as to how a child under the age of criminal responsibility is to be dealt with, if the police suspect that the child has committed an offence. Under this provision, a police officer must hand over the child to his or her family members and notify a child welfare officer that the child may be in need of care and protection.
- 2.18 Clause 18 of the Bill mandates that before initiating criminal proceedings against a child for a summary offence, a police officer may consider other prescribed alternatives such as the issuance of informal or formal warnings.
- 2.19 Clause 19 of the Bill provides for the procedures of arrest in relation to a child which include advising a child that he or she is under arrest, explaining to the child the nature of allegations brought against him or her and the availability of free legal aid.
- 2.20 Clause 20 of the Bill provides for the procedure to be followed where a police officer is not certain as to the age of a person suspected of having committed an offence but has reasons to believe that the person may be under the age of 18 years.
- 2.21 Clause 21 of the Bill provides that where a child has been arrested police, the police must immediately notify the child's parents or other person having care of the child, and if these persons cannot be located, the notification must be made to an appropriate adult nominated by the child or a child justice officer.
- 2.22 Clause 22 of the Bill also mandates the police, when arresting a child, to notify the child justice officer in whose jurisdiction the child was arrested, of the arrest.
- 2.23 Clause 23 of the Bill provides for the roles of the child justice officers upon the arrest or detention of a child.
- 2.24 Clause 24 of the Bill outlines the procedures to be followed when questioning and taking statements from a child in conflict with the law and provides that to the extent practicable, the child must be questioned by a police officer who has received special training in child justice matters.
- 2.25 Clause 25 of the Bill contains provisions relating to the conduct that must be followed by police in relation to children in conflict with the law.

- 2.26 Clause 26 of the Bill provides that the police must not take fingerprints or photographs of a child while in custody except through a court order.
- 2.27 Clause 27 of the Bill provides for the procedures relating to the release of a child who has been arrested without a warrant for any offence other than murder or attempted murder and who cannot be brought before a court. Subject to certain conditions, such as the likelihood of the child attending his or her next court dates, the police officer must release the child into the care and custody of a parent or other appropriate adult.
- 2.28 Clause 28 of the Bill makes provisions for the procedures to be followed where a child cannot be released in accordance with clause 27 of the Bill.
- 2.29 Clause 29 of the Bill provides provision relating to children in police custody, that is, they must be kept separate from adult detainees at all times, they must be treated in a manner that takes into account their age, gender and any special needs and they must be permitted to privately communicate with their parents, family, legal representative and a child welfare officer.
- 2.30 Clause 30 of the Bill provides for the presumption in favour a child's release and the factors that a court must take into account before releasing a child on bail.
- 2.31 Clause 31 of the Bill provides conditions in relation to a child who has been released in accordance with clause 30 of the Bill.
- 2.32 Clause 32 of the Bill makes provisions relating to the placement of children in approved remand homes.
- 2.33 Clause 33 of the Bill mandates that where a child has been remanded in custody, the court must take such steps as are reasonably practicable to expedite the completion of the proceedings so as to minimise the length of time the child must spend in custody.
- 2.34 Clause 34 of the Bill provides for the establishment of Child Justice Courts and other matters relevant to it.
- 2.35 Clause 35 of the Bill allows for the Chief Justice to make rules of court to regulate the practice and procedures under the Bill.
- 2.36 Clause 36 of the Bill provides for the jurisdiction of Child Justice Courts.
- 2.37 Clause 37 of the Bill provides that where a child has been jointly charged with an adult, they must be tried separately unless it is in the interests of justice to join the trials.

- 2.38 Clause 38 of the Bill provides for the procedures that a court must follow upon a child's first appearance and during such inquiry, the same must be conducted informally by asking questions to the child, his or her parents, the public prosecutor or any other person the court deems relevant.
- 2.39 Clause 39 of the Bill provides that a court may, on being satisfied that the child acknowledges responsibility for the offence and without recording a conviction, adjourn proceedings for a period of up to 6 months and release the child upon the child giving an undertaking to comply with specified conditions. The court may order that a community conference to provide recommendations to the court.
- 2.40 Clause 40 of the Bill provides that if it appears during the course of any proceedings under the Bill that the child is a child in need of care and protection as defined under the Child Care and Protection Act 2024 and that it is desirable to deal with the child under the Child Care and Protection Act 2024, the court may suspend the proceedings and order that the matter be referred to the Family Division for a child protection hearing.
- 2.41 Clause 41 of the Bill makes provisions as to how courts must conduct proceedings where a child has been charged with an offence, this includes conducting proceedings with as little formality as the case permits, ensuring that proceedings are fair and that proceedings are conducted in a manner that is appropriate to the understanding of the child.
- 2.42 Clause 42 of the Bill provides that the presence of a child's parent during court proceedings may be dispensed with.
- 2.43 Clause 43 of the Bill provides that every child is entitled, at all stages of proceedings, to have legal representation and if a child appears in a court without legal representation, the court must advise the child of his or her right to obtain counsel and adjourn the matter to allow the child to do so.
- 2.44 Clause 44 of the Bill provides that the trials of a child charged with an offence must be concluded expeditiously and that adjournments must be limited in number and duration.
- 2.45 Clause 45 of the Bill provides that an appeal against conviction or sentence must be governed by the Criminal Procedure Act 2009 and any other written law, with necessary modifications.
- 2.46 Clause 46 provides that any court that has found a child guilty of an offence must impose an order on the child in accordance Part 7.
- 2.47 Clause 47 of the Bill provides for the purpose and principles of imposing an order under Part 7. It also provides for the considerations that must be taken into account when determining the type of order to impose on a child.

- 2.48 Clause 48 of the Bill makes provisions relating to social inquiry reports and that this must be completed within 21 days. The provision also mandates the type of information that must be contained in a social enquiry report and these include information about the maturity, background and behaviour of the child, his or her background and home environment, the views of a victim, any plans by the child's family to address offending behaviour and so forth. The provision also allows for questioning of the child justice officer on the contents of the social inquiry report he or she compiled.
- 2.49 Clause 49 of the Bill makes provisions to allow for the convening of a community conference for the purpose of making recommendations to the court on an appropriate order to be imposed on a child. Upon receipt of the recommendations from a community conference, a court may confirm the recommendations or amend them. If the court does not agree with such recommendations, this must and recorded in the record of proceedings along with the reasons for deviating from the recommendations.
- 2.50 Clause 50 of the Bill provides for the methods of dealing with children who have been found guilty of an offence and this includes the dismissal of a charge, discharge of a child, reprimanding a child, issuing a good behaviour order, counselling, issuing a guidance order and so forth.
- 2.51 Clause 51 of the Bill provides that where the court issues an order against a child in conflict with the law for an offence, he or she is entitled to an explanation of the order.
- 2.52 Clause 52 of the Bill provides the limits in instances where the court issues a community work order on a child in conflict with the law.
- 2.53 Clause 53 of the Bill provides for the conditions relating to community based correction orders or intensive community-based corrections order.
- 2.54 Clause 54 of the Bill provides for the restrictions on the use of custodial orders and such order may only be issued if a court has determined the custodial order is justified because of the seriousness of the offence or the previous failure of the child to respond to a non-custodial order.
- 2.55 Clause 55 of the Bill makes provisions relating to the placement of children subject to a custodial order. For instance, no child must be subject to imprisonment or committed to a corrections centre for adults.
- 2.56 Clause 56 of the Bill prohibits certain forms of punishment on children such as the issuance of a fine, being subjected to corporal punishment or being ordered to a term of life imprisonment.

- 2.57 Clause 57 of the Bill provides for the purpose of custodial facilities set aside for children a such facilities must provide for the safe, fair and humane custody and supervision of children and assist in the rehabilitation and integration of children into the community as law abiding citizens.
- 2.58 Clause 58 of the Bill provides that the Minister may, by notice in the Gazette, approve any premises or a part of any premises to be a remand home or rehabilitation centre and that a child must not be detained in any institution other than a facility approved under Part 8 of the Bill .
- 2.59 Clause 59 of the Bill makes provisions relating to remand homes.
- 2.60 Clause 60 of the Bill makes provisions relating to rehabilitation centres for children Rehabilitation centres which must be used for the care, custody, rehabilitation and reintegration of a child in conflict with the law who is subject to a custody order.
- 2.61 Clause 61 of the Bill makes provisions relating to children in custody and the entitlements that a child is entitled to when remanded in a remand home or committed to a rehabilitation centre.
- 2.62 Clause 62 of the Bill provides that where a child is committed to custody for a period exceeding 2 years, the Director must cause the child to be brought before a court without delay at the end of every 2 year period from the date the order was imposed, and the court must review the order.
- 2.63 Clause 63 of the Bill provides that any child who runs away from a remand home or rehabilitation centre, or who at the expiry of any temporary leave of absence from such centre, fails to return by the due date, the child may be apprehended without a warrant and brought back to that remand home or rehabilitation centre.
- 2.64 Clause 64 of the Bill makes provisions relating to the reintegration of a child into the family or community and the actions that must be undertaken to support and promote the child's reintegration.
- 2.65 Clause 65 of the Bill places restrictions on the publication of information that has the effect of identifying a child who is dealt with under the Bill.
- 2.66 Clause 66 of the Bill makes provisions relating to the criminal record of a child.
- 2.67 Clause 67 of the Bill provides that records in relation to a child dealt with under the Bill are considered privileged and confidential.
- 2.68 Clause 68 of the Bill provides for the Minister's powers to make regulations.
- 2.69 Clause 69 of the Bill repeals Parts 1 to 5 and 13 to 16 of the Juveniles Act 1973.

2.70 Clause 70 and 71 of the Bill provides for the savings and transitional provisions, respectively.

2.71 Clause 72 of the Bill provides for the consequential amendments as specified in the Schedule.

3.0 MINISTERIAL RESPONSIBILITY

3.1 The new legislation comes under the responsibility of the Minister responsible for child welfare.

S. D. TURAGA
Attorney-General