



Secretariat Unit

Bill Essentials

The Family and Children Division Bill, 2015

An Act to vest jurisdiction for all family matters and children matters in a Division of the High Court to be called “the Family and Children Division” and to make provision for matters connected therewith.

Bill No: Senate Bill No. 2 of 2015

Introduced in: The Senate

Introduced on: May 25, 2015

Introduced by: Sen. Ganga Singh [Minister of the Environment and Water Resources and Leader of Government Business in the Senate]



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Background

The Family and Children Division Bill, 2015 was introduced and read for a first time in the Senate on May 25, 2015 by the Sen. Ganga Singh, Minister of the Environment and Water Resources and Leader of Government Business in the Senate.

Purpose of the Bill

The Bill seeks to vest jurisdiction for all family matters and children matters in a Division of the High Court to be called “the Family and Children Division” and to make provision for matters connected therewith.

Legislation mentioned in the Bill

Legal Aid and Advice Act Chap. 7:07¹

Mediation Act Chap. 5:32²

Domestic Violence Chap. 45:56³

Family law (Guardianship of Minors, Domicile and Maintenance) Act Chap. 46:08⁴

Supreme Court of Judicature Act Chap. 4:01

Young Offenders Detention Act Chap. 13:05⁵

Children Act No. 12 of 2012⁶

Summary Courts Act Chap. 4:20⁷

Petty Civil Courts Act Chap. 4:21⁸

Habeas Corpus Act Chap. 8:01⁹

Administration of Estates Act Chap. 9:01¹⁰

Succession Act (Part VIII) Chap. 9:02¹¹

Summary Offences Act Chap. 11:02¹²

Offences Against the Person Act Chap. 11:08¹³

Larceny Act Chap. 11:12¹⁴

¹ http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical_List/lawspdfs/7.07.pdf

² http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical_List/lawspdfs/5.32.pdf

³ http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical_List/lawspdfs/45.56.pdf

⁴ http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical_List/lawspdfs/46.08.pdf

⁵ http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical_List/lawspdfs/13.05.pdf

⁶ <http://www.ttparliament.org/legislations/a2012-12.pdf>

⁷ http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical_List/lawspdfs/4.20.pdf

⁸ http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical_List/lawspdfs/4.21.pdf

⁹ http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical_List/lawspdfs/8.01.pdf

¹⁰ http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical_List/lawspdfs/9.01.pdf

¹¹ http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical_List/lawspdfs/9.02.pdf

¹² http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical_List/lawspdfs/11.02.pdf

¹³ http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical_List/lawspdfs/11.08.pdf

¹⁴ http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical_List/lawspdfs/11.12.pdf

Emigration (Children) Act Chap. 18:02¹⁵
 Mental Health Act Chap. 28:02¹⁶
 Education Act Chap. 39:01¹⁷
 Marriage Act Chap. 45:01¹⁸
 Muslim Marriage and Divorce Act Chap. 45:02¹⁹
 Hindu Marriage Act Chap. 45:03²⁰
 Orisha Marriage Act Chap. 45:04²¹
 Married Persons Act Chap. 45:50²²
 Matrimonial Proceedings and Property Act Chap. 45:51²³
 The Attachment of Earnings (Maintenance) Act Chap. 45:52²⁴
 Maintenance Orders (Enforcement) Act Chap. 45:53²⁵
 Cohabital Relationships Act Chap. 45:55²⁶
 Infants Act Chap. 46:02²⁷
 Adoption of Children Act Chap. 46:03²⁸
 Age of Majority Act Chap. 46:06²⁹
 Status of Children Act Chap. 46:07³⁰
 Children’s Authority Act Act No. 64 of 2000³¹
 Children’s Community Residence, Foster Homes and Nurseries Act Act No. 65 of 2000³²
 Occupational Health and Safety Act, 2004 (Part IX) Chap. 88:08³³
 International Child Abduction Act Chap. 12:08³⁴

¹⁵ http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical_List/lawspdfs/18.02.pdf

¹⁶ http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical_List/lawspdfs/28.02.pdf

¹⁷ http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical_List/lawspdfs/39.01.pdf

¹⁸ http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical_List/lawspdfs/45.01.pdf

¹⁹ http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical_List/lawspdfs/45.02.pdf

²⁰ http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical_List/lawspdfs/45.03.pdf

²¹ http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical_List/lawspdfs/45.04.pdf

²² http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical_List/lawspdfs/45.50.pdf

²³ http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical_List/lawspdfs/45.51.pdf

²⁴ http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical_List/lawspdfs/45.52.pdf

²⁵ http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical_List/lawspdfs/45.53.pdf

²⁶ http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical_List/lawspdfs/45.55.pdf

²⁷ http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical_List/lawspdfs/46.02.pdf

²⁸ http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical_List/lawspdfs/46.03.pdf

²⁹ http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical_List/lawspdfs/46.06.pdf

³⁰ http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical_List/lawspdfs/46.07.pdf

³¹ <http://www.ttparliament.org/legislations/a2000-64.pdf>

³² <http://www.ttparliament.org/legislations/a2000-65.pdf>

³³ http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical_List/lawspdfs/88.08.pdf

³⁴ http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical_List/lawspdfs/12.08.pdf

Key Features of proposed Legislation

Part I-Preliminary

1. Clause 1 would set out the short title of the Bill.
2. Clause 2 would provide for the Act to come into force on Proclamation.
3. Clause 3 would provide the definition of certain words and phrases used in the Act.

Part II-The Family and Children Division of the High Court

4. Clause 4 would provide for the establishment of a Division of the High Court to be known as “the Family and Children Division” which shall comprise a Family Court Sub-Division known as “the Family Court”, and a Children Court Sub-Division known as “the Children Court”, with jurisdiction in family and children matters respectively. This clause would also provide the complement of Puisne Judges and Masters for the Family and Children Division.
5. Clause 5 would provide for the sittings of the Family Court and the Children Court to be held at such locations and at such times as the Chief Justice may appoint and also that the courts may sit at any time and conduct hearings by telephone, video conference or other appropriate electronic means and provides for the exercise of concurrent jurisdiction in family matters in Courts of Summary jurisdiction and the High Court until the Chief Justice directs otherwise.

Part III-Administration of the Family and Children Division

Deputy Registrar and Marshals and Assistant Registrar and Marshals

6. Clause 6 would provide for the assignment of Deputy Registrars and Marshals, Assistant Registrars and Deputy Marshals to the Family and Children Division who possess the requisite special training, experience and temperament suitable for the appointment to the Family and Children Division. The clause would also set out the rights, powers and immunities of the Deputy Registrar and Marshal, and the Assistant Registrar and Marshal.

Court Administration

7. Clause 7 seeks to establish a Family and Children Court Administration Department comprising of the Central Office of the Family and Children Division, the Family Court Sub-Division and the Children Court Sub-Division.
8. Clause 8 would provide for the appointment of a Deputy Court Executive Administrator to head the Family and Children Division and to be assisted by a Family Court Administrator and a Children Court Administrator, who shall report to the Court Executive Administrator.

Part IV-The Family Court

9. Clause 9 would provide the commencement of the jurisdiction and powers of the Family Court.

Family Court Judges

10. Clause 10 would empower the Chief Justice to assign Puisne Judges to the Family Court who shall be known as “Family Court Judges”.
11. Clause 11 prescribes the powers of a Family Court Judge or a Family Court Master in family matters.

Family Court Masters

12. Clause 12 would empower the Chief Justice to assign Masters to the Family Court who when sitting in the Family Court shall be known as “Family Court Masters”.
13. Clause 13 prescribes the powers of a Family Court Master.
14. Clause 14 empowers a Family Court Master to make an Order as if it had been made by a Family Court or Family Court Judge.
15. Clause 15 would provide for the enforcement of Maintenance Orders issued by the Family Court or a Family Court Judge or a Family Court Master in furtherance of the magisterial jurisdiction of the Family Court.

Administration and Staff of the Family Court

16. Clause 16 would provide for the staff of the Family Court.
17. Clause 17 seeks to establish a Department to be known as “the Family Court Administration Department” to be headed by a Family Court Administrator, and to establish Units, in the Family Court.
18. Clause 18 would provide for the Family Court to have a Family Court Manager in each location of the Family Court.
19. Clause 19 would require that a member of staff of the Family Court make an oath or affirmation of secrecy before a Judge or Justice of the Peace, before entering upon the performance of their functions.

Proceedings in the Family Court

20. Clause 20 would provide for the Family Court Proceedings Rules to be applicable to any family matter before the Family Court.
21. Clause 21 would empower the Family Court to hold proceedings *in camera*, for proceedings not to be published, and to restrict publication of the names of the parties or of any proceedings before the Family Court. It would also allow for copies of any proceedings, judgment or ruling to be redacted by the Family Court Records Management, Court and Law Reporting Unit before it is published, to protect the identity of a child. The Family Court may also seal the copies of any transcript of proceedings or other document relevant to any proceedings involving a child.

22. Clause 22 would empower the Family Court to appoint a Guardian *ad litem* of a child and request the appointment of a Children Attorney to represent and safeguard the voice of a child in any family matter.
23. Clause 23 would allow for an adjournment by the Family Court to allow for an application to be made under the Legal Aid and Advice Act, Chap. 7:07.
24. Clause 24 would enable the transfer of matters from any other court to the Family Court where the court is of the view that the elements of the matter make it desirable that the matter should be dealt with and adjudicated by the Family Court.
25. Clause 25 would preserve the appellate procedure applicable to any judgment or order of a magistrate or Judge to the Court of Appeal to be so applied in respect of appeals from the Family Court.

Part V-Administration of the Children Court Sub-Division

26. Clause 26 would provide for the staff of the Children Court Sub-Division.
27. Clause 27 would prescribe the composition of the Children Court Sub-Division of the Family and Children Court Administration Department.

Part VI-The Children Court

28. Clause 28 would provide the commencement of the jurisdiction and powers of the Children Court.

Children Court Judges

29. Clause 29 would empower the Chief Justice to assign Puisne Judges to the Children Court who shall be known as “Children Court Judges”.
30. Clause 30 prescribes the powers of a Children Court Judge or a Children Court Master.

Children Court Masters

31. Clause 31 would empower the Chief Justice to assign Masters to the Children Court who shall be known as “Children Court Masters”.
32. Clause 32 would prescribe the powers of a Children Court Master.
33. Clause 33 would prescribe that an Order of a Children Court Master shall have the same effect as if it had been made by the Children Court or by a Children Court Judge.

Administration and Staff of the Children Court

34. Clause 34 would provide for the Children Court to have a Children Court Manager in each location of the Children Court.
35. Clause 35 would require that a member of staff of the Children Court make an oath or affirmation of secrecy before a Judge or Justice of the Peace, before entering upon the performance of their functions.

Proceedings in the Children Court

36. Clause 36 would empower the Children Court to order copies of any proceedings, judgment or ruling to be redacted by the Children Court Records Management, Court and Law Reporting Unit before it is published, to protect the identity of a child. The Children Court may also seal the copies of any transcript of proceedings or other document relevant to any proceedings involving a child.
37. Clause 37 would empower the Children Court to appoint a Guardian *ad litem* of a child and request the appointment of a Children Attorney to represent and safeguard the voice of a child in any children matter.
38. Clause 38 would allow for an adjournment by the Children Court to allow for an application to be made under the Legal Aid and Advice Act, Chap. 7:07.
39. Clause 39 would empower the Children Court to refer a child who is a first time offender charged with a minor offence in a children matter, with the agreement of the child and his or her parent or guardian, to the Peer Resolution Centre.
40. Clause 40 would enable the Children Court to refer a child to the Peer Resolution Centre where, the parent or guardian of that child withholds consent to refer the child to the Centre, the child agrees to the referral and the Court determines that the referral is in the best interest of the child.
41. Clause 41 would require the Children Court to explain the court annexed peer resolution process in plain language to the child, the parent or the guardian before seeking agreement for referral to the Peer Resolution Centre.
42. Clause 42 would enable the transfer of matters from any other court to the Children Court where the court is of the view that the elements of the matter make it desirable that the matter should be dealt with and adjudicated by the Children Court.
43. Clause 43 would preserve the appellate procedure applicable to any judgment or order of a Children Court Master or Children Court Judge to the Court of Appeal to be so applied in respect of appeals from the Children Court.

Part VII-Miscellaneous

44. Clause 44 would allow the Rules Committee to make Rules for the Family and Children Division subject to negative resolution of Parliament.
45. Clause 45 would enable the President to amend Schedule 1 by Order and for such Order to be subject to negative resolution of Parliament.
46. Clause 46 would provide transitional provisions to allow for family and children proceedings that were instituted in the High Court or in Courts of Summary Jurisdiction prior to the commencement of this Bill, to continue to be heard in the respective courts.
47. Clause 47 would provide for consequential amendments to be made to the written laws specified in the first column of schedule 3 to the extent specified in the second column of that schedule.

Considerations

- The Bill provides that the Family and Children Division of the High Court shall comprise up to twenty-two (22) Puisne Judges and twenty-eight (28) Masters.
- The Bill provides that up to three (3) Deputy Registrars and Marshals of the Supreme Court and up to ten (10) Assistant Registrars and Deputy Marshals shall be assigned to the Family and Children Division.
- The Bill provides that the Chief Justice shall determine an appropriate number of suitably qualified persons to staff the Family and Children Court Administration.
- Jurisdiction in family matters previously exercised by Courts of Summary Jurisdiction will continue to be so exercised except in the St. George West Magisterial District.
- The Bill provides that a child may consent to court-annexed Peer-Resolution notwithstanding his parent/guardian withholds consent.

Comparative Legislation in other Jurisdictions

Country	Legislation	Remarks
United Kingdom	Children and Families Act 2014 ³⁵	“An Act to make provision about children, families, and people with special educational needs or disabilities; to make provision about the right to request flexible working; and for connected purposes.”
	Family Law Act 1996 ³⁶	“An Act to make provision with respect to: divorce and separation; legal aid in connection with mediation in disputes relating to family matters; proceedings in cases where marriages have broken down; rights of occupation of certain domestic premises; prevention of molestation; the inclusion in certain orders under the Children Act 1989 of provisions about the occupation of a dwelling-house; the transfer of tenancies between spouses and persons who have lived together as husband and wife; and for connected purposes.”
	Crime and Courts Act 2013, Section 17(3) ³⁷	“Establishment of the family court (1)There is to be a court in England and Wales, called the family court, for the purpose of exercising the jurisdiction and powers conferred on it— (a)by or under this or any other Act, or

³⁵ <http://www.legislation.gov.uk/ukpga/2014/6/contents>

³⁶ <http://www.legislation.gov.uk/ukpga/1996/27/contents>

³⁷ <http://www.legislation.gov.uk/ukpga/2013/22/section/17>

		(b)by or under any Act, or Measure, of the National Assembly for Wales. (2)The family court is to be a court of record and have a seal.”
Australia	Family Law Act 1975 ³⁸ Children’s Court of Western Australia Act ³⁹	“An Act relating to Marriage and to Divorce and Matrimonial Causes and, in relation thereto and otherwise, Parental Responsibility for Children, and to financial matters arising out of the breakdown of de facto relationships and to certain other Matters” “An Act to establish the Children’s Court of Western Australia and for related purposes.”
India	The Juvenile Justice (Care and Protection of Children) Act 2000 ⁴⁰ The Juvenile Justice (Care and Protection of Children) Bill, 2014 ⁴¹ The Family Courts Act, 1984 ⁴²	“An Act to consolidate and amend the law relating to juveniles in conflict with law and children in need of care and protection, by providing for proper care, protection and treatment by catering to their development needs, and by adopting a child-friendly approach in the adjudication and disposition of matters in the best interest of children and for their ultimate rehabilitation and for matters connected therewith or incidental thereto.” A Bill to consolidate and amend the law relating to children alleged and found to be in conflict with law and children in need of care and protection by catering to their basic needs through proper care, protection, development, treatment, social re-integration, by adopting a child-friendly approach in the adjudication and disposal of matters in the best interest of children and for their rehabilitation through processes provided, and institutions and bodies established, hereinunder and for matters connected therewith or incidental thereto. An Act to provide for the establishment of Family Courts with a view to promote conciliation in, and

³⁸ http://www.comlaw.gov.au/Details/C2014C00355/Html/Text#_Toc392748882

³⁹ http://www.austlii.edu.au/au/legis/wa/consol_act/ccowaa1988385/

⁴⁰ <http://www.advocatekhoj.com/library/bareacts/juvenile/index.php?Title=Juvenile%20Justice%20%28Care%20and%20Protection%20of%20Children%29%20Act,%202000>

⁴¹ <http://www.prsindia.org/uploads/media/Juvenile%20Justice/Juvenile%20justice%20Bill,%202014.pdf>

⁴² http://ncw.nic.in/acts/The_Family_Courts_Act_1984.pdf

		secure speedy settlement of, disputes relating to marriage and family affairs and for matters connected therewith
Canada	Youth Criminal Justice Act 2000 ⁴³	“An Act in respect of criminal justice for young persons and to amend and repeal other Acts.”
New Zealand	Supreme Court Act 2003 ⁴⁴	“4. District Court includes: (a) a Family Court and Youth Court.”

Reference Material

Articles

- Working of Family Courts in India – The National Commission for Women
<http://ncw.nic.in/pdfreports/Working%20of%20Family%20courts%20in%20India.pdf>
- Specialised Courts and Sentencing – Professor Arie Freiberg, University of Melbourne
http://www.aic.gov.au/media_library/conferences/probation/freiberg.pdf
- Juvenile Justice Reform in England and Wales – Rob Allen
http://www.unafei.or.jp/english/pdf/RS_No59/No59_15VE_Allen1.pdf
- Canada’s Juvenile Justice System: Promoting Community-Based Responses to Youth Crime
<http://esc-eurocrim.org/files/ch02.pdf>
- Canada’s Juvenile Justice Law & Children’s Rights
http://www.ibcr.org/editor/assets/conference/13bala_eng.pdf
- The Evolution of Juvenile Justice in Canada
<http://www.justice.gc.ca/eng/abt-apd/icg-gci/jj2-jm2/jj2-jm2.pdf>

Newspaper References

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- Trinidad Express Newspapers, November 7, 2010 – AG: New Family Court Bill a priority
http://www.trinidadexpress.com/news/AG_New_Family_Court_Bill_a_priority-106863263.html?m=y&smobile=y
- Trinidad and Tobago Newsday, August 17, 2014 – Justice Smith: Family court for a holistic society
http://www.newsday.co.tt/crime_and_court/0,199209.html
- Trinidad and Tobago Newsday, November 25, 2014 – CJ: Youth Court gentler on minors
http://www.newsday.co.tt/crime_and_court/0,203370.html

Other Useful Information

- Family Justice – Ministry of Justice, New Zealand

⁴³ <http://laws-lois.justice.gc.ca/eng/acts/y-1.5/>

⁴⁴ http://www.legislation.govt.nz/act/public/2003/0053/latest/whole.html?search=ts_act_Supreme+Court+Act+2003_resel&p=1#d1m214028

<http://www.justice.govt.nz/family-justice>

- Youth Courts – United Kingdom
<https://www.gov.uk/courts/youth-courts>
- Youth Justice – Canada Department of Justice
<http://www.justice.gc.ca/eng/cj-jp/yj-ji/index.html>
- Family Court of Australia
<http://www.familycourt.gov.au/>



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