



# Bill Essentials

## The Family and Children Division Bill, 2016

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

11th Parliament

Introduced in: House of Representatives  
Introduced on: 19 February 2016  
Introduced by: Attorney General Faris Al- Rawi

## BACKGROUND

First established as a Pilot Project in 2004, the Family Court has jurisdiction over specific family matters at the High Court and Magistrates' Court levels. The Court adopts a participatory approach in dispute resolution and, therefore, is a special problem solving Court, intended to develop, implement and evaluate alternative approaches and improve services to citizens seeking help from the Judiciary in dealing with family disputes.

Prior to the establishment of this court, family disputes were being handled in the same court environment as criminal matters and regular civil matters. The atmosphere was not conducive to calm discussion and settlement. It bred combativeness and aggression, was often intimidating, and left the average litigant feeling alienated from the disposition of his own matter. It was not at all helpful in resolving family problems or even recognizing the sensitivity of the issues in family litigation.

The Family Court has implemented and evaluated a number of innovations including the development of a unified Court Office for both High Court and Magistrates' Court matters, and ensuring customers have access to a multi-door/one-shop Court that includes on-site alternative dispute resolution processes such as mediation, social work intervention and probation.

Operations of the Family Court are currently restricted to the St. George West jurisdiction for magisterial proceedings. However, this does not apply to the High Court jurisdiction, where there is no such restriction<sup>1</sup>.

It was intended that the experience of the pilot project would inform the preparation of the legislation to establish a special Court exercising jurisdiction for all family matters and criminal offences with which children under fourteen years of age are charged<sup>2</sup>.

## PURPOSE OF THE BILL

The Family and Children Division Bill, 2016 was introduced and read for a first time in the House of Representatives on February 19, 2016 by the Attorney General Faris Al- Rawi. The Bill seeks to make jurisdiction for all family matters and children matters exercisable in a

---

<sup>1</sup> <http://www.ttlawcourts.org/index.php/family-court-41/overview>

<sup>2</sup> <http://www.ttparliament.org/legislations/b2016h03.pdf>

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

Children Act Chap. 46:01<sup>3</sup>

Probation of Offenders Act Chap. 13:51<sup>4</sup>

Mental Health Act Chap. 28:02<sup>5</sup>

Family Law (Guardianship of Minors, Domicile and Maintenance) Act Chap. 46:08

Legal Aid and Advice Act, Chap. 7:07<sup>6</sup>

Domestic Violence Act, Chap. 45:56<sup>7</sup>

Children's Authority Act Chap. 46:10<sup>8</sup>

Supreme Court of Judicature Act Chap. 4:01<sup>9</sup>

Summary Courts Act Chap. 4:20<sup>10</sup>

Matrimonial Proceedings and Property Act Chap. 45:51<sup>11</sup>

Maintenance Orders (Facilities for Enforcement) Act Chap.45:53<sup>12</sup>

Administration of Estates Act Chap. 9:01<sup>13</sup>

Succession Act (Part VIII) Chap. 9:02<sup>14</sup>

Emigration (Children) Act Chap. 18:02<sup>15</sup>

Marriage Act Chap. 45:01<sup>16</sup>

Muslim Marriage and Divorce Act Chap.45:02<sup>17</sup>

Hindu Marriage Act Chap.45:03<sup>18</sup>

Orisa Marriage Act Chap.45:04<sup>19</sup>

Married Persons Act Chap. 45:50<sup>20</sup>

---

<sup>3</sup> [http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical\\_List/lawspdfs/46.01.pdf](http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical_List/lawspdfs/46.01.pdf)

<sup>4</sup> [http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical\\_List/lawspdfs/13.51.pdf](http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical_List/lawspdfs/13.51.pdf)

<sup>5</sup> [http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical\\_List/lawspdfs/28.02.pdf](http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical_List/lawspdfs/28.02.pdf)

<sup>6</sup> [http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical\\_List/lawspdfs/7.07.pdf](http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical_List/lawspdfs/7.07.pdf)

<sup>7</sup> [http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical\\_List/lawspdfs/45.56.pdf](http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical_List/lawspdfs/45.56.pdf)

<sup>8</sup> [http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical\\_List/lawspdfs/46.10.pdf](http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical_List/lawspdfs/46.10.pdf)

<sup>9</sup> [http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical\\_List/lawspdfs/4.01.pdf](http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical_List/lawspdfs/4.01.pdf)

<sup>10</sup> [http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical\\_List/lawspdfs/4.20.pdf](http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical_List/lawspdfs/4.20.pdf)

<sup>11</sup> [http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical\\_List/lawspdfs/45.51.pdf](http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical_List/lawspdfs/45.51.pdf)

<sup>12</sup> [http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical\\_List/lawspdfs/45.53.pdf](http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical_List/lawspdfs/45.53.pdf)

<sup>13</sup> [http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical\\_List/lawspdfs/9.01.pdf](http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical_List/lawspdfs/9.01.pdf)

<sup>14</sup> [http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical\\_List/lawspdfs/9.02.pdf](http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical_List/lawspdfs/9.02.pdf)

<sup>15</sup> [http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical\\_List/lawspdfs/18.02.pdf](http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical_List/lawspdfs/18.02.pdf)

<sup>16</sup> [http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical\\_List/lawspdfs/45.01.pdf](http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical_List/lawspdfs/45.01.pdf)

<sup>17</sup> [http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical\\_List/lawspdfs/45.02.pdf](http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical_List/lawspdfs/45.02.pdf)

<sup>18</sup> [http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical\\_List/lawspdfs/45.03.pdf](http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical_List/lawspdfs/45.03.pdf)

<sup>19</sup> [http://rgd.legalaffairs.gov.tt/laws2/alphabetical\\_list/lawspdfs/45.04.pdf](http://rgd.legalaffairs.gov.tt/laws2/alphabetical_list/lawspdfs/45.04.pdf)

<sup>20</sup> [http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical\\_List/lawspdfs/45.50.pdf](http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical_List/lawspdfs/45.50.pdf)

Attachment of Earnings (Maintenance) Act Chap.45:52<sup>21</sup>  
 Cohabital Relationships Act Chap.45:55<sup>22</sup>  
 Infants Act Chap. 46:02<sup>23</sup>  
 Adoption of Children Act Chap.46:03<sup>24</sup>  
 Age of Majority Act Chap.46:06<sup>25</sup>  
 Status of Children Act Chap.46:07<sup>26</sup>  
 Children’s Community Residences, Foster Care and Nurseries Act 65 of 2000<sup>27</sup>  
 Occupational Safety and Health Act (Part IX) Chap.88:08<sup>28</sup>  
 International Child Abduction Act Chap.12:08<sup>29</sup>

## KEY FEATURES OF THE PROPOSED LEGISLATION

### Definition of “child”

- At present, the definition of “child” in the Laws of Trinidad and Tobago varies in different provisions. It is defined in the **Children Act, 2012**, which was partially proclaimed in 2015, as follows:
 

*“child means a person under the age of eighteen years”.*
- However, under Section 3 of the **Bail Act, Chap 4:60**<sup>30</sup> “child” means a person under the age of fourteen years. The Bail Act also defines “young person” as meaning a person who has attained the age of fourteen and is under the age of sixteen.
- The **Emigration (Children) Act Chap 18:02**<sup>31</sup> defines “child” as “a person under the age of sixteen years, but does not include a child who is not a citizen of Trinidad and Tobago”.

<sup>21</sup> [http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical\\_List/lawspdfs/45.52.pdf](http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical_List/lawspdfs/45.52.pdf)

<sup>22</sup> [http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical\\_List/lawspdfs/45.55.pdf](http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical_List/lawspdfs/45.55.pdf)

<sup>23</sup> [http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical\\_List/lawspdfs/46.02.pdf](http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical_List/lawspdfs/46.02.pdf)

<sup>24</sup> [http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical\\_List/lawspdfs/46.03.pdf](http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical_List/lawspdfs/46.03.pdf)

<sup>25</sup> [http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical\\_List/lawspdfs/46.06.pdf](http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical_List/lawspdfs/46.06.pdf)

<sup>26</sup> [http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical\\_List/lawspdfs/46.07.pdf](http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical_List/lawspdfs/46.07.pdf)

<sup>27</sup> <http://ttchildren.org/images/legislation/CHILDRENS%20COMMUNITY%20RESIDENCES%20FOSTER%20CARE%20AND%20NURSERIES%20ACT%202000.pdf>

<sup>28</sup> [http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical\\_List/lawspdfs/88.08.pdf](http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical_List/lawspdfs/88.08.pdf)

<sup>29</sup> [http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical\\_List/lawspdfs/12.08.pdf](http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical_List/lawspdfs/12.08.pdf)

<sup>30</sup> [http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical\\_List/lawspdfs/4.60.pdf](http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical_List/lawspdfs/4.60.pdf)

<sup>31</sup> [http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical\\_List/lawspdfs/18.02.pdf](http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical_List/lawspdfs/18.02.pdf)

- There are also definitions in legislation for terms such as “young person”, “minor”, “young offender” and “juvenile”.
- Under the **Age of Majority Act, Chap 46:06**, “a person shall attain full age on attaining the age of eighteen”. Section 2(2) of the Act further states that this definition applies for the purposes of any rule of law, and in the absence of a definition or of any indication of a contrary intention, for the construction of “full age”, “infant”, “infancy”, “minor”, “minority” and similar expressions.
- The **Family Law (Guardianship of Minors, Domicile and Maintenance) Chap. 46:08** defines “minor”, rather than “child”. In this Act “minor” means “a person under the age of eighteen years”.
- Similarly, Section 23 of the **Marriage Act Chap. 45:01**<sup>32</sup>, refers to consent to the marriage of a “minor”, however the Act does not define “minor”.
- The **Sexual Offences Act, Chap 11:28**<sup>33</sup> defines “minor” to mean “a person under eighteen years of age”.
- The Family and Children Division Bill 2016 seeks to harmonise the definition of “child” in various legislative provisions. It defines “child” to mean “a person under the age of eighteen years”, which is consistent with the meaning of child in the **Children Act, 2012**. Schedule 5 of the Bill outlines consequential and other amendments to various Acts, in relation to the use of the word “child”.

## Legal Representation of a Child

---

- Clause 3 of the Bill defines a “Children’s Attorney” as having the meaning assigned under Section 88 of the **Children Act, 2012**.

---

<sup>32</sup> [http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical\\_List/lawspdfs/45.01.pdf](http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical_List/lawspdfs/45.01.pdf)

<sup>33</sup> [http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical\\_List/lawspdfs/11.28.pdf](http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical_List/lawspdfs/11.28.pdf)

- Section 88 of the **Children Act, 2012** provides for the appointment by the Judicial and Legal Service Commission, of attorneys-at-law with experience as family law practitioners to be called “Children’s Attorneys” including one attorney-at-law who shall be appointed as the Senior Children’s Attorney. It also provides at Section 88(5) that a Children’s Attorney can be assigned to represent and safeguard the interest of a child and perform such other functions as the Court may think necessary.
- Under Clauses 21 and 35 of the Family and Children Division Bill 2016, the Court may request the appointment of a Children’s Attorney to represent and safeguard the voice of a child and to perform such other functions as the Court may think necessary.
- Clause 35(2) of the Bill also refers to the power of a “Duty Counsel” to apply to have a Children’s Attorney appointed for child who is a suspect or witness, or is who is being investigated or interrogated in a criminal investigation.
- “Duty Counsel” as defined under Section 4A of the **Legal Aid and Advice Act Chap. 7:07** is an Attorney-at-law willing to provide legal representation for a minor as soon as possible after the minor is detained on suspicion of having committed an offence.
- Under Section 15B of the **Legal Aid and Advice Act**, the Duty Counsel provides legal representation for the suspect until such time as the minor’s parent or guardian, has appointed an Attorney-at-law and has discharged the Duty Counsel, the Duty Counsel, discontinues his services to the minor; or the minor is released without being charged.

## Establishment of Family and Children Divisions of the High Court

---

- The Bill provides for the establishment of the Family Court and the Children Court and vesting of jurisdiction for family matters and children matters as well as the assignment of Puisne Judges and Masters to each Court.
- The Bill also provides for the administration and staff at the courts, including the appointment of Family Court Managers (Clause 17) and Children Court Managers (Clause 32) at each court location.

## Proceedings of the Family and Children Courts

---

- The Bill would empower both the Family Court (Clause 20) and the Children Court (Clause 34) to restrict the publication of the names of the parties or of any proceedings before the Court. Clause 20 also empowers the Family Court to order that proceedings be held *in camera*<sup>34</sup>.
- The Bill would also allow for copies of any proceedings, judgment or ruling to be redacted<sup>35</sup> by the Family or Children Court Records Management, Court and Law Reporting Subunit before it is published, to protect the identity of a child. The Bill also empowers both Courts to seal the copies of any transcript of proceedings or other document relevant to any proceedings involving a child.
- Clause 21 would empower the Family Court to appoint a *guardian ad litem* for a child. A *guardian ad litem* is an individual (usually an Attorney-at-Law) appointed by the court to represent the best interests of a child involved in a matter before it. A Guardian ad litem is a unique type of guardianship created by order of the court to last only for the duration of a legal matter.

## Peer Resolution

---

- Clause 40(1) of the Bill introduces Peer Resolution as an alternative method of sentencing a child who has committed an offence other than those listed in Schedule Four.
- Schedule Four of the Bill precludes the following Offences (which would ordinarily have attracted a custodial sentence):
  - Treason
  - Offences against the person, namely –
    - Murder;
    - Conspiring or soliciting to commit murder;
    - Manslaughter;
    - Shooting or wounding with intent to do grievous bodily harm or unlawful wounding;

---

<sup>34</sup> *In camera* proceedings are matters which are heard in the courtroom with all spectators excluded

<sup>35</sup> *Redaction* is the careful editing or censoring of a document to remove confidential references or sensitive or offensive material

- Assault occasioning bodily harm.
  - Offences involving kidnapping, namely
    - Kidnapping;
    - Kidnapping for ransom;
    - Knowingly negotiating to obtain a ransom
  - Any sexual offence
  - Any drug trafficking offence
  - Offences under the Trafficking in Persons Act, 2011
  - Unlawful possession of a firearm or ammunition
  - Possession or use of firearms or ammunition with intent to endanger life
  - Possession of imitation firearms in pursuance of any criminal offence
  - Robbery, Robbery with aggravation, Robbery with violence
  - Sedition
  - Piracy or Hijacking
  - An offence under the Anti-gang Act, 2011
  - Inciting any of the offences in the Schedule
- The Court however, retains the discretion to refrain from referring a child to Peer Resolution where it is of the view that the nature of the crime is such as to make it unsuitable for Peer Resolution: Clause 40(2) of the Bill.

### *What is Peer Resolution?*

- The Judiciary of Trinidad and Tobago in collaboration with the United States Agency for International Development (USAID) and the United Nations Development Programme (UNDP) launched an initiative called the Juvenile Court Project (JCP). The Juvenile Court Project (JCP) is aimed at strengthening the capacity of the Judiciary to deal with children matters using a rehabilitative, restorative and less retributive approach.
- As a part of this initiative, the Judicial Court Programme is currently in the process of launching a Pilot Peer Resolution Programme and is now inviting applications from young people between the ages of 13 and 17 who are interested in becoming volunteers in the Court-annexed Peer Resolution programme.
- The Bill defines Peer Resolution as:

*“a voluntary restorative practices process in which children participate in a Court-like process of assessment to recommend measures or sanctions*



*appropriate to the offence committed by a child offender with a view to raising civic awareness among all participants through education and participation.”<sup>36</sup>*

### *How does Peer Resolution Work?*

- When a child (or “Respondent”) commits an offence other than those listed in Schedule Four to the Bill, he or she can attend a hearing where he or she is questioned by other children who are called “Peers Assessors”. Clause 43(3) defines Peer Assessors as:

*“Children who during the Peer Resolution Process, determine the recommended sanction for a child in accordance with the rules relating to Peer Assessment.”*

- The child and his or her parent(s) or guardian or person with responsibility for the child must agree to go to Peer Resolution. Notably, where the parent (s) or guardian of the child withhold(s) consent to referral to Peer Resolution but the child agrees, the Court where it is of the view that it is in the best interest of the child may refer the child to Peer Resolution (Clause 41)
- The Peer Assessors give appropriate “sanctions” or activities that the Respondent must complete to make up for what he or she has done wrong. Sanctions may include community service, behavioural programmes, education workshops, counselling, apology, curfew, restitution, and doing good work for others. Peer Resolution does not decide if a child is guilty or innocent.<sup>37</sup>
- The objective of Peer Resolution and similar types of programmes is the use of positive peer pressure to ensure that young people who have committed minor offenses learn accountability and repair the harm caused by their actions. In these jurisdictions, a variety of justice agencies refer cases to youth courts with the goal of preventing further involvement in the juvenile or criminal justice systems.

---

<sup>36</sup> Clause 3 of the Family and Children Division Bill, 2016

<sup>37</sup> <http://www.jcp.tt/peer-resolution>

- Similar processes have also been utilized in New Zealand with the aim of ensuring that juvenile justice in New Zealand is a collaborative effort between youths, their families, victims, the community, and the government, based on restorative justice principles.

## Children Drug Treatment Court Process

---

- In September 2012 a Drug Treatment Court Pilot was launched in select locations throughout Trinidad and Tobago. The Drug Treatment Court was designed to supervise cases of drug offenders who agree to participate in treatment for their substance abuse. The concept of the Drug Treatment Court is to combine traditional justice processes with treatment options. However, the project was not specifically aimed at children or young adult offenders.
- At present, the **Dangerous Drugs Act Chap 11:25** provides for a lesser penalty for younger offenders. **Section 56A** states:

*“Where a person under the age of twenty-one years appears before a Court and is found guilty of an offence under this Act, the Judge or Magistrate may impose a lesser penalty on such a person than that specified for the offence in this Act.”*

- Clause 47 of the Family and Children Division Bill provides for the Children Court to adjourn a matter involving a child where the Court is satisfied, on specified criteria that the matter is to be heard before a Judge or master assigned to adjudicate in Children Drug Treatment Court Process matters.
- The procedure to be followed by the Court where the child is referred to the Children Drug Treatment Process is set out in Clause 50 (1) of the Bill as follows:

*“If the Court makes an order referring a child to the Children Drug Treatment Court Process, the Court shall -*

- (a) Inform the Children Drug Treatment Court Process Manager immediately;*
- (b) Forward a summary of the case file including medical, psychosocial and risk assessment reports to the Children Drug Treatment Court Process Manager;*
- and*
- (c) Adjourn the sentencing hearing to a date to be determined following the graduation report or failure report being submitted by the Children Drug Treatment Court Process to the referring Court; and*
- (d) Notify the parent, guardian or person with responsibility for the child.”*

### *How does a Children's Drug Court Work?*

- The traditional focus in sentencing young offenders is rehabilitation and, consequently, traditional Children's Court processes and court intervention programs share many common aspects. Sentencing proceedings tend to examine the young offender's social background and circumstances and impose orders to address underlying problems to ensure that future offending and contact with the criminal justice system is reduced.
- Further, there are a number of diversionary options available for young offenders in the Children's Court (e.g. cautions, juvenile justice teams) with the aim of diverting young people away from the formal criminal justice system and avoiding contact with more serious offenders. While court intervention programs divert offenders away from imprisonment or divert offenders into treatment, they do not divert offenders away from the criminal justice system. Instead, the court is actively involved in supervising and monitoring participants' progress and participants are required to appear in court more, not less, often.

## Comparative Legislation in Other Jurisdictions-Children Courts

---

### CANADA-THE YOUTH CRIMINAL JUSTICE ACT 2000

- The **Youth Criminal Justice Act** governs offending by youths aged 12 to 18, with children under 12 who commit offences being dealt with by means of voluntary measures or under child welfare legislation. It encourages police and prosecutors to divert youths from the court process and places restrictions on the use of pre-trial detention of youths.
- The Act places an emphasis on meaningful consequences for offenders and reparation to victims, while continuing to recognize that, compared to adults, there should be a lesser degree of accountability and more emphasis on rehabilitation. The maximum sentence under the Act is three years, and youths are to be confined in separate facilities from adults.

- New community-based sentencing options were introduced such as “intensive community supervision” and “attendance centers.” Also introduced was a new treatment oriented sentencing option for youth found guilty of the most serious offences, “intensive rehabilitative custody and supervision.”
- Under the Act, custody is restricted to cases where the youth has:
  - Committed a violent offence; or
  - Committed a non-violent offence and has a history of non-compliance with community-based sentences; or
  - Committed a non-violent offence and has a “history that indicates a pattern of findings of guilt”; or
  - Committed a non-violent offence in “exceptional circumstances.”
- The Act allows for a judge to decide whether a youth who receives a custodial sentence will be placed in open or secure custody, though correctional officials will decide on the specific facility within that level of custody. Youths receiving custodial sentences are ordinarily to serve the last third of their sentence on community supervision, thereby promoting a planned reintegration of the youth into the community.
- Adult Sentences are restricted to the most serious, violent offences committed by youths 14 years and over.
- The Act protects the privacy of youths, preventing the publication of identifying information and restricts access to youth records. The Act does, however, permit the publication of the names of young offenders convicted of the most serious violent offences in specified circumstances.

#### UNITED KINGDOM-THE CHILDREN AND YOUNG PERSONS ACT 1969

- If a young person commits an offence and the Public Prosecution Service refers the case to court, it will be heard at the Youth Court. However, even if a young person's case is sent to the Youth Court, it may recommend the offence(s) be dealt with outside of court.

- A Youth Court in the United Kingdom is a magistrates' court with specific jurisdiction to try criminal cases involving young people under the age of 18. The court is made up of a District Judge (Magistrates' Court), who acts as chairperson, and is assisted by two lay magistrates.
- If a young person is charged with a very serious offence they may have to appear in a Crown Court, rather than a youth court. This might happen if the case involves:
  - violent offences including murder, attempted murder, serious sexual offences and robbery;
  - offences, that if the young person were an adult, the case could be heard in a Crown Court; and
  - cases sent to the Crown Court from youth courts for sentencing
- At youth court, a young person who has been found guilty can receive any one of a number of court ordered sentences:
  - *Absolute Discharge*
  - *Conditional Discharge*, by which the young person may be set free on the condition that they stay out of trouble for a set period of time, usually between six months and two years.
  - *Fines*
  - *Deferred Sentence*
  - *Attendance Center Order* which requires the young person to attend an 'attendance center', which is usually a Youth Justice Agency local office, for a period of between 12 and 24 hours. During this time the young person will work with the Youth Justice Agency to improve their behavior.
  - *Reparation Order* which requires the young person to make amends to their victim or the wider community by carrying out an agreed activity such as attending Programmes to address their behavior or by helping with a local charity.
  - *Community Responsibility Order*, involving a range of activities such as helping out at a local charity to help the young person understand their responsibility to their community and the impact of the offence on themselves and others.
  - *Community Service Order*, which is a type of order imposed on young people over 16 years of age who have committed a crime that may alternatively be

punished with custody. The young person will do unpaid work in the community for a period of between 40 hours and 240 hours.

- *Probation Order*, where a probation officer works closely with the young person for a period of time to help prevent them from getting into trouble again.
- *Custodial Sentences* for serious offences or where a judge considers that they represent a danger to the community because of the serious violent or sexual nature of the offence.
- *Electronic Tagging*

#### SOUTH AUSTRALIA-THE YOUTH COURT ACT 1993 AND YOUNG OFFENDERS ACT 1993

- The Youth Court of South Australia was established under the **Youth Court Act (SA) 1993** and hears matters in relation to criminal offending, child protection, adoption and surrogacy. It is made up of two branches – the Court (including the Registry) and the Conferencing Unit. The Court is presided over by the Senior Judge and the two units are administered by the manager of each branch.
- The current Youth Court is a specialist court which deals with young offenders from the ages of 10 to 17. All major indictable trials, for example, aggravated serious criminal trespass, endangering life, etc., must be presided over by a Judge. Minor indictable offences, for example; non-aggravated serious criminal trespass, damage property, mark graffiti etc. are presided over by a Magistrate.
- The Law related to youth offending is governed by the **Young Offenders Act 1993**. The court hears matters in relation to criminal offending, child protection, adoption and surrogacy.
- All Youth Court hearings are closed to the public. The **Youth Court Act 1993** states that the only persons allowed into court are:
  - Officers of the court
  - Officers of the Department for Communities and Social Inclusion
  - Parties to the proceedings and their legal representatives
  - Witnesses while giving evidence
  - A guardian of the child
  - An alleged victim

- A genuine representative of the news media
- Although the media are allowed into court, the **Youth Court Act** restricts reports of the proceedings so that nothing may be published which may lead to the identification of the youth.

#### NEW ZEALAND-THE CHILDREN, YOUNG PERSONS AND THEIR FAMILIES ACT 1989

- The **Children, Young Persons and Their Families Act 1989** established new objects and principles for Youth Justice and set up an innovative system for responding to the young people who offend. The new system emphasises diversion from courts and custody, and, while holding young persons accountable, facilitates the construction of responses that aim to provide for the rehabilitation and reintegration of young people, support for their families, and that take into account the needs of victims.
- The system has been hailed as an example of restorative approach to offending by young people, both because of its objects and principles and because of its use of family group conferences for determining the outcomes of the more serious offending by young people.
- When a young person offends the Police can respond by, (in reverse order of severity):
  - issuing a warning not to reoffend;
  - arranging informal diversionary responses after consultation with victims, families and young people;
  - where intending to charge, making referrals to Child Youth and Family Services for a family group conference; or
  - arresting and laying charges in the Youth Court.
- The Youth Court will refer matters to a family group conference before making a decision and will prefer decisions that respond to victims, and keep the young person in the community (where public safety does not require otherwise) and enhance their wellbeing.

- At the heart of the system lies the Family Group Conference which enables those involved in the life of the young person and the victim(s) of offending to be involved in decisions that aim to ensure accountability, repair harm and enhance wellbeing.

#### INDIA -THE JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT 2000

- In the **Juvenile Justice (Care and Protection of Children) Act** a child or juvenile is defined as a person who has not completed his/her 18th year of age. It outlines two target groups: Children in need of care and protection and Juveniles in conflict with law.
- This Act protects not only the rights of children, but a person's rights when he/she was a child. This means that if a crime or an incident took place while the person was a child, and then during the matter the juvenile ceased to be of age the case would continue as if the juvenile has not turned eighteen yet.
- The Act provides for the establishment of Juvenile Justice Boards (JJBs) where the State Government sees fit. JJBs must contain a Metropolitan or Judicial magistrate and two social workers where one of the workers must be a woman. The magistrate is required to have a background in child psychology or child welfare. Cases involving Juveniles in conflict with law can only be heard in the JJB and not by another court. The powers of the JJB can be exercised in a High court or Court of Session when an appeal has been made as part of the Act, the state is required to set up a number of institutions where the needs and protection of juveniles may be fulfilled.
- For the reception and rehabilitation of Juveniles in conflict with law, the state must set up Observation Homes and Special Homes in ever district or group of districts. The state may directly set up these homes or contract a voluntary organisation to do so. Observation homes are for institutions for juveniles while their proceedings are underway. After the proceedings of a particular case are complete, the JJB may decide that the rehabilitation of the child is not complete and hence place them in a Special home for no longer than three years

#### WESTERN AUSTRALIA –CHILDREN’S COURT OF WESTERN AUSTRALIA ACT 1988



- The Perth Children's Court began under the State Children's Act 1907 and operated within the City of Perth. After amendments, the Court was allowed to sit in the metropolitan area. The Perth Children's Court became known as the Children's Court of WA when the **Children's Court of WA Act 1988** was passed.
- The Children's Court hears criminal matters involving young people (aged 10 to 17 years) who are accused of committing offences. If a young person turns 18 after the date of the alleged offence, he or she will still appear before the Children's Court.
- The Children's Drug Court operates in the Perth Children's Court and targets young offenders who are facing detention. The program generally lasts for 12 months and unlike the adult jurisdiction, there is no restriction on the power to defer sentencing. Sentencing is deferred and participants are placed on bail with conditions to comply with the drug program.
- The President of the Children's Court determines if an offender can participate and sentences the offender at the end of the program; however, a Children's Court Magistrate case manages and monitors the offender throughout the program.
- In the Children's Court, the drug Court team includes a magistrate, a police prosecutor, a legal Aid lawyer, a representative from the Aboriginal legal Service, Court Assessment and Treatment Officers (CATS), a supervised bail officer, a psychologist and a representative from a residential treatment facility.
- Like the adult Drug Court, the Children's Court Drug Court uses a breach point system to respond to compliance and non-compliance but it operates in reverse: participants are given 20 points at the start of the program, losing points for non-compliance and gaining points for doing well. Bail is also revoked during the program as an informal 'custody sanction' for serious non-compliance.

## Comparative Legislation in Other Jurisdictions-Family Courts

---

- The Family Court of Australia is a superior court of record established by the passing of Family Law Act 1975, under Chapter 3 of the Australian Constitution. It commenced operations on 5 January 1976 and currently comprises a Chief Justice, Deputy Chief Justice, Appeal Division judges and other judges. In July 2008, there were 44 judges (5 of whom were also Judges of the Family Court of Western Australia), 2 judicial registrars and 1 senior registrar. The Court maintains registries in all Australian states and territories except Western Australia which has its own Family Court.
- The Family Court deals with parenting cases including those that involve a child welfare agency and/or allegations of sexual abuse or serious physical abuse of a child (Magellan cases), family violence and/or mental health issues with other complexities, multiple parties, complex cases where orders sought having the effect of preventing a parent from communicating with or spending time with a child, multiple expert witnesses, complex questions of law and/or special jurisdictional issues, international child abduction under the Hague Convention, special medical procedures and international relocation.
- The Court also has jurisdiction over cases that involve multiple parties, valuation of complex interests in trusts or corporate structures, including minority interests, multiple expert witnesses, complex questions of law and/or jurisdictional issues (including accrued jurisdiction) or complex issues concerning superannuation (such as complex valuations of defined benefit superannuation schemes).

#### INDIA -THE FAMILY COURTS ACT 1984

- The **Family Courts Act 1984** provides for the family courts of India with a view to promoting conciliation in and secure speedy settlement of disputes relating to marriage and family affairs. According to Section 2 (d) of the act, "Family Court" means a family court established under section 3. Section 3 describes the establishment of Family Courts which are subordinate to the High Court, which has power to transfer the case from one family court to the other.
- The matters which are dealt in the Family Court in India are matrimonial relief which includes nullity of marriage, judicial separation, divorce, restitution of conjugal rights, declaration as to the validity of marriage and matrimonial status of the person,

property of the spouses or any of them and declaration as to the legitimacy of any person, guardianship of a person or custody of any minor and maintenance.

#### JAMAICA -THE JUDICATURE FAMILY COURT ACT 1975

- The Family Court of Jamaica is presided over by a Resident Magistrate, referred to in this Court as a Judge of the Family Court. Resident Magistrates are appointed by the Governor General on recommendation of the Judicial Services Commission. They are assigned to a parish by the Chief Justice and report to the Chief Justice. The minimum qualification for the Resident Magistrate is five (5) years at the Bar.

## 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](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](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](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>
- A History of Youth Justice in New Zealand, by Emily Watt  
<http://www.justice.govt.nz/courts/youth/documents/about-the-youth-court/History-of-the-Youth-Court-Watt.pdf>
- Red Hook Youth Court Overview  
[http://www.courtinnovation.org/sites/default/files/documents/RHYC\\_FS.pdf](http://www.courtinnovation.org/sites/default/files/documents/RHYC_FS.pdf)
- Creating a Youth Court-Operations Manual  
[http://www.courtinnovation.org/sites/default/files/documents/Youth\\_Court\\_Operations\\_Manual.pdf](http://www.courtinnovation.org/sites/default/files/documents/Youth_Court_Operations_Manual.pdf)
- Trinidad and Tobago Newsday, September 27, 2005 – Family Court – a huge success  
<http://www.newsday.co.tt/news/0,30267.html>
- 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](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](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](http://www.newsday.co.tt/crime_and_court/0,203370.html)
- Caribbean News Now, July 11, 2014-Trinidad and Tobago welcomes first group of graduates from pilot drug treatment court  
<http://www.caribbeannewsnow.com/headline-Trinidad-and-Tobago-welcomes-first-group-of-graduates-from-pilot-drug-treatment-court-21971.html>

Other Useful References

- Family Court of Trinidad and Tobago- Overview  
<http://www.ttlawcourts.org/index.php/family-court-41/overview>



Parliament Secretariat  
Parliament of the Republic of Trinidad and Tobago  
Levels G-8, Tower D,  
Port of Spain International Waterfront Centre  
#1A Wrightson Road, Port of Spain

March 8, 2016