

.. (Published 30th July, 2010)

Act

No. 22 of 2010

I assent

PROF. BINGU WA MUTHARIKA

PRESIDENT

29th JULY, 2010

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An Act to consolidate the law relating to children by making provision for child care and protection and for child justice; and for matters of social development of the child and for connected matters

ENACTED by the Parliament of Malawi as follows

Part and section	Label
PART I – PRELIMINARY	
1) This Act may be cited as the Child Care, Protection and Justice Act, 2010, and shall come into operation on such date as the Minister shall appoint by notice in the Gazette.	Short title and commencement
<p>2) In this Act, unless the context otherwise requires</p> <p>"appropriate adult" means an adult relative or any adult who knows the child or is known to the child or any person appointed by the court, but shall not include</p> <ul style="list-style-type: none"> a) a police officer, investigator, prosecutor or any person working with the police in relation to the case; b) victim of the offence; c) a witness in the case whether for or against the child; or d) a person who has been convicted in relation to an offence involving child abuse; <p>"Board" means the Child Case Review Board established under section 150;</p> <p>"child" means a person below the age of sixteen years; "child" used in relation to proceedings before age determination shall, if the age is unknown, include a person who appears to be below sixteen years of age;</p> <p>"child justice court" means a subordinate court established under section 132;</p> <p>"child panel" means a child panel established under section 116;</p> <p>"court" in relation to proceedings relating to a child, includes any tribunal;</p> <p>"diversion" means the referral of cases of child offenders away from formal court proceedings with or without conditions;</p> <p>"diversion option" means a plan or a programme of diversion of a prescribed order and content and of specified duration;</p> <p>"foster care" means the placement of a child in a foster home or with a foster parent;</p> <p>"foster child" means a child placed in a foster home or with a foster parent;</p> <p>"foster parent" means a person with whom a child is placed for foster care and protection under this Act;</p> <p>"foster home" means a home approved by the Minister under section 46 or 47;</p>	Interpretation

"guardian" means a person who has lawful or legitimate custody, care or control of a child in place of a parent;

"parent" includes an adoptive parent, foster parent or any person acting in whatever way as parent;

"parent, guardian, or appropriate adult" used in relation to a child means a parent, guardian or appropriate adult of the child;

"place of detention" means a place of detention as provided under this Act;

"place of safety" means an appropriate place where a child in need of care and protection can be kept temporarily and includes a safety home or a foster home;

"private reformatory centre" means a reformatory centre established under section 158;

"private safety home" means a safety home established under section 158;

"medical officer" means any person duly authorized to perform duties of a medical personnel and includes a health worker;

"probation officer" means a person appointed as such under section 15 of the Probation of Offenders Act or any other qualified person whom the Minister may appoint to perform probation duties for the purposes of this Act;

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"public reformatory centre" means a reformatory centre established under section 157;

"public safety home" means a safety home established under section 157;

"reformatory centre" means a home or institution or part thereof established for the purposes of

- a) reception, education and vocational training; and
- b) counselling of children in accordance with this Act.

"restorative justice" means the promotion of reconciliation, reconstruction and sense of responsibility in respect of the offence committed by a child;

"safety home" means a place or part thereof for the purposes of reception, education, counseling and safety of children before conclusion of trial or in circumstances requiring placement of a child for care and protection.

"serious offence" in relation to a child means any of the offences listed in the Fourth Schedule;

Fourth Schedule

"vocational training" means training in some branch of useful industry, including agriculture.

PART II - CHILD CARE AND PROTECTION

Division I - Child Care And Protection by the Family

- 3) (1) In addition to the duties and responsibilities imposed by section 23 of the Constitution, a parent or guardian-
 - a) shall not deprive a child of his or her welfare;

Duties and responsibilities of parents

- b) has responsibilities whether imposed by law or otherwise towards the child which include the responsibility to-
- i) protect the child from neglect, discrimination, violence, abuse, exploitation, oppression and exposure to physical, mental, social and moral hazards;
 - ii) provide proper guidance, care, assistance and maintenance for the child to ensure his or her survival and development, including in particular adequate diet, clothing, shelter and medical attention;
 - iii) ensure that during the temporary absence of the parent or guardian, the child shall be cared for by a competent person;
 - iv) exercise joint primary responsibility for raising their children,

except where the parent or guardian has forfeited or surrendered his or her rights and responsibilities in accordance with the law.

(2) A parent or guardian shall be responsible for the registration of the birth of his or her children.

(3) The fact that a parent or guardian has parental responsibility for a child shall not entitle him or her to act in any way which would be incompatible with any court order made in respect of the child.

(4) Subject to this Act, a person who does not have parental responsibility for a particular child but has care of the child may do what is reasonable in all the circumstances of the case for the purposes of safeguarding or promoting the welfare of the child.

(5) Where it is more than one person that have parental responsibility for a child, each of them may act alone and without the other or others in meeting that responsibility; but nothing in this Division shall affect the operation of any law which requires the consent of more than one person in a matter affecting the child.

- 4) In the application of the provisions of this Act, and in any matter concerning a child, due regard shall be had to duties and responsibilities of the child to-

Duties and responsibilities of children

- a) respect the parents, guardians, superiors and elders at all times and depending on the age of the child assist them in cases of need;
- b) serve the community by placing his or her physical and intellectual abilities at its service;
- c) preserve and strengthen social and national unity and character of Malawi;
- d) uphold the positive values of the community; and
- e) contribute towards the child's own development into being a useful member of the society,

but due regard shall be paid to the age and ability of the child and to such limitations as are contained in this Act.

- 5) (1) Where the parents of a child are not known or where parentage is disputed, the following persons may apply to a child justice court for an order to determine the parentage of a child-
- Parentage
- a) the child;
 - b) the parent of the child;
 - c) the guardian of the child;
 - d) a probation officer;
 - e) a social welfare officer; or
 - f) any other interested person as the child justice court may deem fit.
- (2) The application for parentage may be made
- a) before the child is born; or
 - b) before a child is sixteen years of age or after the child has attained that age but with special leave of a child justice court or the High Court.
- (3) For the purposes of succession and inheritance, the application for parentage shall be made within three years after the death of the father or mother of a child.
- 6) (1) The following shall be considered by a child justice court as evidence of parentage -
- Evidence of parentage
- a) the name of the parent entered in the register of births;
 - b) performance of a customary ceremony towards the child by the purported father of the child;
 - c) refusal by the purported father to submit to medical test;
 - d) public knowledge of parentage; and
 - e) any other matter that the child justice court may consider relevant.
- (2) The child justice court may order the putative father to submit to a medical test.
- 7) The child justice court shall, on the basis of the evidence under section 6 determine whether or not the alleged parent is the parent of the child.
- Determination of parentage
- 8) (1) A parent, a family member or any other appropriate person may apply to a child justice court for custody of a child;
- Custody and access
- (2) A family member or any other appropriate person may apply to a child justice court for periodic access to the child.
- (3) The child justice court shall consider the best interests of the child and the importance of the child, on account of age, being with his mother when making an order for custody or access.
- (4) In addition to the matters under subsection (3), a child justice court shall consider-
- a) the views of the child;

- b) that it is desirable to keep siblings together; and
- c) any other matter the child justice court may consider relevant.
- (5) Upon application for custody or access under this section, the child justice court may make an order granting the applicant custody or the access to the child, and may attach such conditions as the court may consider appropriate.
- 9) (1) Where a parent or any other person who is legally liable to maintain a child or to contribute towards the maintenance of the child, neglects to maintain the child, neglects to maintain the child or to make the contribution, the following persons may apply against such person to the child justice court for a maintenance order of the child-
- a) the child;
- b) the parent of the child;
- c) the guardian of the child;
- d) relatives of the child;
- e) a social welfare officer;
- f) a police officer;
- g) a teacher;
- h) a health officer; and
- i) any other appropriate person.
- 10) A child justice court shall consider the following when making a maintenance order-
- a) the income and wealth of both parents of the child or of the person legally liable to maintain the child;
- b) any impairment in the earning capacity of the person with a duty to maintain the child;
- c) the financial responsibility of the person with respect to the maintenance of other children;
- d) the cost of living in the area where the child resides;
- e) the rights of the child under this Act; and
- f) any other matter, which the child justice court may consider relevant.
- 11) A child justice court may request that a social welfare officer prepare a social inquiry report on the issue of maintenance and submit the report to the child justice court for consideration before the child justice court makes the maintenance order.
- 12) A child justice court may award maintenance to the child and the maintenance order may include the following-
- a) periodic expenses for the child;

Application for
maintenance

Consideration for
maintenance

Request for so-
cial inquiry re-
port

Maintenance
order

- b) a periodic allowance for the maintenance of the child; and
- c) the payment of a reasonable sum to be determined by the child justice court for the education of the child.
- 13) (1) Where periodic payment or lump sum payment for the maintenance of a child has been ordered, the child justice court may order that the earnings, salary or property of the person liable, be attached. Attachment order
- (2) The attachment order shall be applicable in all cases of failure to pay maintenance.
- (3) The attachment order may be directed to the employer to deduct the slim of the maintenance funds every time payment of the salary is made.
- (4) If the maintenance order is made before the birth of the child or within two months after the birth of the child, such payment may, if the court thinks fit, be calculated from the birth of the child.
- 14) (1) A person who has custody of a child who is the subject of a maintenance order under the Act is under a duty to receive and administer the funds on behalf of the child. Persons entitled to receive maintenance funds
- (2) A copy of the maintenance order shall be served on the public officer or the local government officer responsible for children welfare in the area.
- (3) The public officer or the local government officer shall make quarterly reports to the child justice court that made the order on the way funds are being administered.
- 15) (1) A maintenance order made in pursuance of this Act, shall, except for purposes only of recovering money previously due under such order, cease to be of any force or validity- Duration of maintenance order
- a) after the death of the child;
- b) after the marriage of the child;
- c) after the child has attained the age of sixteen years.
- (2) A maintenance order may lapse before the child attains the age of sixteen years if before that age the child is gainfully and permanently employed.
- 16) (1) Notwithstanding the provisions of section 15, a child justice court may continue or order a resumption of a maintenance order after the child has attained the age of sixteen years if the child is engaged in education or training after that age, up to obtaining his or her first university qualification where applicable. Continuation of maintenance order
- (2) An application under this section may be brought by the child a parent or guardian, or any other person who has custody of the child.
- 17) A child justice Court may, if satisfied that the interests of the child will be better protected or will not be adversely affected, vary or discharge, as the case may be, a maintenance order on the application of the child, a parent, guardian, the person having custody of the child or any other person le- Variation or discharge of orders

- gally liable to maintain the child.
- 18) Maintenance orders shall be enforced thirty (30) days after the order is made, but a child justice court may in appropriate circumstances, make an order for a longer period. Enforcement of maintenance orders
 - 19) Unless the child justice court orders otherwise, the responsibility to maintain a child as between parents and guardians shall be joint and several. Joint responsibility to maintain a child
 - 20) A child justice court or High Court shall have power to make a maintenance order against either parent or both parents where proceedings for nullity, judicial separation, divorce or any other matrimonial proceedings are filed by either parent, and such order may be made during such proceedings or after a final decree is made in such proceedings. Maintenance during matrimonial proceedings
 - 21) Whenever a maintenance order is made under this Act, the child justice court may, at the time of making the order, or from time to time thereafter, on being satisfied that the person having custody of the child- Power to make maintenance funds to be paid to a person other than the applicant
 - a) is not or has ceased to be a fit and proper person to receive any maintenance funds specified in the order in respect of the child,
 - b) has left the jurisdiction of the child justice court for an indefinite period,
 - c) is dead or is incapacitated or has become of unsound mind,
 - d) has been imprisoned or has been declared insolvent,
 - e) has misappropriated, misapplied or mismanaged any maintenance funds paid to him for the benefit of the child,
 - f) has otherwise committed an offence under this Act,

appoint any other person it considers fit and responsible to receive and administer any maintenance funds required to be paid under a maintenance order, or order the person required to make a payment of the maintenance funds to invest the funds in whole or in part in trust for the benefit of the child.
 - 22) (1) A person who, being liable to maintain a child under a maintenance order, fails to maintain the child in respect of food, clothing, health, basic education and reasonable shelter, commits an offence and- Offences
 - a) on first conviction. shall be liable to pay the maintenance order;
 - b) on the second or every subsequent conviction for continuous failure to maintain the child, shall be liable to imprisonment for one year.

(2) A person who misapplies funds paid under a maintenance order commits an offence and shall be liable to imprisonment for one year and a fine of K50,000.

Division 2 - Children in Need of Care and Protection

- 23) (1) A child is in need of care and protection if- Determination of children in need of care and pro-
 - a) the child has been or there is substantial risk that the child will be

- physically, psychologically or emotionally injured or sexually abused by the parent or guardian or a member of the family or any other person;
- tection
- b) the child has been or there is substantial risk that the child will be physically injured or emotionally injured or sexually abused and the parent or guardian or any other person, knowing of such injury, risk or abuse, has not protected or is unlikely to protect the child from such injury, risk or abuse;
 - c) the parent or guardian of the child is unfit or has neglected, or is unable, to exercise proper supervision and control over the child and the child is tailing into undesirable association;
 - d) the parent or guardian of the child has neglected or is unwilling to provide for the child's adequate care, food, clothing, shelter, education and health;
 - e) the child-
 - i) has no parent or guardian; or
 - ii) has been abandoned by the parents or guardians and after reasonable inquiries the parents or guardians cannot be found, and no other suitable person is willing and able to care for the child;
 - f) the child needs to be examined, investigated or treated for the purposes of restoring or preserving the health of the child and if the parents or guardians neglects or refuse to have the child so examined, investigated or treated;
 - g) the child behaves in a manner that is, or is likely to be, harmful to the child or to any other person and the parents or guardians are unable or unwilling to take necessary measures to remedy the situation or the remedial measures taken by the parents or guardians have failed and as a result the child cannot be controlled by his parents or guardians;
 - h) there is such a conflict between the child and the parents or guardians of the child, or between the parents or guardians, that family relationships are seriously disrupted, thereby causing the child emotional injury;
 - i) the child is in the custody of a person who has been convicted of committing an offence in connexion with that child;
 - j) the child frequents the company of immoral, vicious, or otherwise undesirable person or persons or is living in circumstances calculated to cause or induce the seduction, corruption or prostitution of the child;
 - k) the child is allowed to be on a street, premises or any place for the purpose of-
 - i) begging or receiving alms, whether or not there is any pretence of singing, playing, performing or offering anything for sale and as a result the child becomes a habitual beggar;
 - ii) carrying out illegal hawking, illegal lotteries, gambling or other il-

legal activities detrimental to the health and welfare or retard the educational advancement of the child;

- l) the child cannot be controlled by his/her parent or guardian or the person in custody of the child; and
- m) if the child is assessed by the Social Welfare Officer to be in need of care and protection.

(2) For the purposes of this Division, a child is-

- a) physically injured if there is injury to any part of the body of the child as a result of the non-accidental application of force or agent to the child's body that is evidenced by, among other things, a laceration, a concussion, an abrasion, a scar, a fracture or other bone injury, a dislocation, a sprain, a hemorrhaging, a rupture, a burn, a scald, loss or alteration of consciousness or loss of hair or teeth;
- b) emotionally and psychologically injured if there is impairment of the mental or emotional functioning of the child that is evidenced by, amongst other things, a mental or behavioural disorder, including anxiety, depression, withdrawal, aggression or delayed development;
- c) sexually abused if the child has taken part, whether as a participant or an observer, in any activity which is sexual in nature for the purposes of-
 - i) any pornographic or indecent material, photograph, recording, film, videotape or performance; or
 - ii) sexual exploitation by any person for sexual gratification or for commercial gain.

24) A police officer, social welfare officer, a chief or any member of the community, if satisfied on reasonable grounds that a child is in need of care and protection, may take the child and place him/her into his/her temporary custody or a place of safety.

Taking a child into place of safety

25) (1) Subject to section 26, a child who is taken into a place of safety under section 24 shall be brought before a child justice court within forty-eight hours.

Presentation before child justice court

(2) If it is not possible to bring a child before a child justice court within the time specified under subsection (1), the child shall be brought before any magistrate who may direct that the child be placed in-

- a) a place of safety; or
- b) the care of a fit and proper person,

until such time as the child can be brought before a child justice court.

(3) Where a child in need of care and protection is brought before a child justice court, the court shall, if the age of the child is not known, refer him/her to a probation officer for age estimation.

(4) If a child is in a place of safety or in the care of a fit and proper person

under subsection (2)-

- a) the person in charge of the place of safety or such fit and proper person shall have like control over, and responsibility for the maintenance of, the child as the parent or guardian of the child would have had; and
- b) the child shall continue to be in the care of the person referred to in paragraph (a) notwithstanding that the child is claimed by the parent or guardian or any other person.

(5) A social welfare officer, police officer, chief or any member of the community who takes a child to a place of safety under this section shall, immediately upon such taking, cause the parent or guardian of the child to be notified of such taking if the parents are known and if it is practicable to do so.

(6) A police officer, chief or any member of the community who takes a child into temporary custody under this section shall, immediately upon such taking, notify the social welfare officer of such taking.

- 26) (1) If a social welfare officer, police officer, chief or any member of the community is of the opinion that a child is in need of medical examination or treatment he may, instead of bringing the child before a child justice court present the child for medical care. Child in need of medical examination
 - (2) If a social welfare officer, police officer or chief is satisfied on reasonable grounds that the child is in need of medical examination or treatment, he may direct either in writing or orally that the person keeping the child for the time being immediately present the child for medical care.
 - (3) If the person referred to under subsection (2) fails to comply within forty-eight (48) hours with a direction made under that subsection, the social welfare officer, police officer or chief may take the child into temporary custody for the purpose of taking the child for the medical care.
- 27) (1) A medical officer before whom a child is presented under section 26 shall provide or cause to be provided such examination or treatment as the medical officer thinks necessary. Medical examination and treatment
 - (2) The child who is presented before a medical officer under subsection (1) shall be exempted from medical fees with the authority of a District Social Welfare Officer.
 - (3) The medical officer shall upon completing the treatment present a report to the person who brought the child for the medical care.
- 28) If the medical officer is of the opinion that hospitalization of the child is necessary, he/she shall cause the child to be so hospitalized. Hospitalization
- 29) If a child is hospitalized under section 28, the social welfare officer shall have the same control and responsibility over the maintenance of the child as the person in charge of a place of safety would have had if the child had been placed in a place of safety. Control over hospitalized children
- 30) (1) If, in the opinion of the medical officer, the child referred to under sec- Authorization of

tion 28 is suffering from a minor illness, injury or condition, the treatment may be authorized by a social welfare officer. medical treatment

(2) If, in the opinion of the medical officer, the child referred to in section 28 is suffering from a serious illness, injury or condition or requires surgery or psychiatric examination or treatment, a social welfare officer or police officer-

- a) shall immediately notify or take reasonable steps to notify and consult the parent or guardian of the child or any person having authority to consent to such examination or treatment; and
- b) may, with the written consent of the parents or guardians or such other appropriate person, authorize such medical or surgical or psychiatric examination or treatment as may be considered necessary by the health worker.

(3) If a medical officer has certified in writing that there is immediate risk to the health of a child, a social welfare officer or police officer may authorize, without obtaining the consent referred to in subsection (2), such medical or surgical or psychiatric examination or treatment as may be considered necessary by the medical officer but only under any of the following circumstances-

- a) that the parent or guardian of the child or any person having authority to consent to such examination or treatment has unreasonably refused to give, or abstained from giving, consent to such treatment;
- b) that the parent or guardian or the person having authority to consent to such examination or treatment is not available or cannot be found within a reasonable time; or
- c) the social welfare officer or the police officer believes on reasonable grounds that the parent or guardian or the person having authority to consent to such examination or treatment has ill-treated, neglected, abandoned, or exposed or sexually abused, the child.

31) (1) A child who is placed in a place of safety and is medically examined or treated shall be brought before a child justice court within forty-eight hours-

Steps to be taken after medical examination or treatment

- a) of the completion of such examination or treatment; or
- b) if the child is hospitalized, of his/her discharge from the hospital.

(2) If it is not possible to bring the child before the child justice court within the time specified in subsection (1), the child shall be brought before any magistrate who may direct that the child be placed in-

- a) (a) a place of safety; or
 - b) (b) the care of a fit and proper person,
- until such time as the child can be brought before child justice court.

(3) A child who-

- a) is taken into custody under section 24; and
- b) subsequently undergoes medical examination or treatment, may be returned to the person from whose care the child was taken upon the completion of such examination or treatment or if the child is hospitalized, upon discharge from the hospital.
- 32) (1) If a child is examined or treated pursuant to section 27-
- a) the social welfare officer or police officer who authorizes such examination or treatment;
- b) the medical officer who examines or treats the child; and
- c) all persons acting in aid of the medical officer,
- shall not incur any civil or criminal liability at law by reason only that a child is examined or treated pursuant to that section.
- (2) Nothing contained in subsection (1) relieves a medical officer from liability in respect of any negligent medical examination or treatment of a child.
- No liability incurred for giving authorization
- 33) (1) A medical officer shall, if he believes on reasonable grounds that a child being examined or treated is physically, psychologically or emotionally injured as a result of being ill-treated, neglected, abandoned or exposed, or is sexually abused, immediately inform a social welfare officer or police officer.
- (2) A medical officer who fails to comply with subsection (1) commits an offence and shall be liable to a fine of K20,000 and to imprisonment for six months.
- Duty of a medical officer
- 34) (1) If any member of the family of a child believes on reasonable grounds that the child is physically, psychologically or emotionally injured as a result of being ill-treated, neglected, abandoned or exposed or is sexually abused, he/she shall immediately inform a social welfare officer or a police officer.
- (2) A member of the family who fails to comply with subsection (1) commits an offence and shall be released on a binding agreement on conditions to be determined by the court.
- Duty of members of the family
- 35) (1) If a child care provider believes on reasonable grounds care provider that a child is physically, psychologically or emotionally injured as a result of being ill-treated, neglected, abandoned or exposed, or is sexually abused, he/she shall inform a social welfare officer or a police officer.
- (2) If a child care provider fails to comply with subsection (1) commits an offence and shall be liable to a fine of K10,000 and to imprisonment for three months.
- Duty of child care providers
- 36) (1) If a member of the community believes on reasonable grounds that a child is physically, psychologically or emotionally injured, abandoned, or exposed, or is sexually abused, he/she shall immediately inform a chief, a police officer or a social welfare officer.
- Duty of members of the community

(2) A member of the community who fails to comply with subsection (1) commits an offence and shall be liable to a fine of K 10,000 and to imprisonment for three months.

- 37) (1) If a child justice court is satisfied that any child brought before it under this Division is a child in need of care and protection, the court may-
- a) order the parents or guardians to enter into a binding agreement to exercise proper care and guardianship for a period specified by a child justice court;
 - b) make an order placing the child in the custody of a fit and proper person for a period specified by the child justice court;
 - c) without any other order or in addition to an order made under paragraph (a) or (b), make an order placing the child under the supervision of-
 - i) a social welfare officer; or
 - ii) some other person appointed for the purpose by the child justice court,
- for a period specified by the child justice court.

Functions of child justice courts in cases of children in need of care

Division 3 - Guardianship

- 38) (1) A guardian may be appointed by-
- a) the testamentary will or choice of a parent;
 - b) an order of the court; and
 - c) the family of the child.
- (2) A guardian may be appointed in respect of any child who is resident in Malawi.
- (3) A guardian appointed under this Act shall be a person resident in Malawi.
- (4) Where a guardian is appointed only in respect of the estate of the child, the guardian need not have actual custody of the child but shall, with the authority of the child justice court and with the assistance of a legal representative as the Court may provide for the child, have-
- a) power and responsibility to administer the estate of the child, and in particular to receive or recover and invest the property of the child in his/her own name for the benefit of the child;
 - b) the duty to take all reasonable steps to safeguard the estate of the child from loss or damage;
 - c) the duty to produce and avail accounts or a written report to the child justice court in the prescribed form in the First Schedule.
- 39) (1) A parent of a child may by will or deed appoint any person to be a guardian of the child after that parent's death.
- (2) A guardian of a child may by will appoint another individual to take

Appointment of guardian

First Schedule

Application of a testamentary guardian

his place as the guardian of the child in the event of his death.

- 40) (1) If a child, or any member of the family, considers that a surviving parent is unfit to have legal custody of the child, he may apply to the child justice court for the appointment of a guardian.
- (2) The Court, after considering the application, may-
 - a) appoint the guardian;
 - b) make an order that the guardian shall act jointly with the parent; or
 - c) make any other order which the Court considers appropriate in the circumstances.
- (3) Where the child justice court makes an order that the guardian is the only guardian of the child, it may order the parent to pay the guardian a financial provision towards the maintenance of the child, having regard to the means of the parent as the court may consider reasonable.
- (4) A guardian who has been appointed to act jointly with the surviving parent under subsection (2), shall continue to act as a guardian after the death of the parent, but if the parent appointed a guardian by will, before his/her death the guardian appointed by the child justice court shall act jointly with the guardian appointed by the parent

Application for the appointment of a guardian by a child or family member

- 41) (1) A child justice court may, in the best interest of a child, appoint a guardian on the application made by any person where-
 - a) the child's parents are no longer living;
 - b) the parents cannot be found;
 - c) the child has no guardian and there is no other person having parental responsibility for the child; or
 - d) where the parents of the child are no longer living together and it is necessary in the best interests of the child that a guardian be appointed for the child.

Application for the appointment of a guardian by other persons other than a child or a family member

- 42) (1) An appointment for guardianship shall determine upon the child attaining the age of sixteen years, unless exceptional circumstances exist that require a child justice court to grant an order that the appointment be extended.
- (2) An application for extension of guardianship shall be made within six months before or after the child's sixteenth birthday.
- (3) A child justice court making an order under this section shall specify the duration of the order and the order may contain such conditions and directions as the court may see fit.

Extension of guardianship beyond a child's sixteenth birthday

- 43) A child justice court may, on application by the child, parent, guardian, a family member or a social welfare officer, vary, modify or revoke a guardians order.

Power to revoke, modify or vary a guardians order

- 44) Where two or more persons act as joint guardians to a child or where the surviving parent and a guardian act jointly and are unable to agree on any

Disputes between guardians

question affecting the welfare of the child, any of them may apply to a child justice court for its direction, and the child justice court may make orders regarding the differences as it may think proper.

- 45) A guardian of the estate of a child who-
- a) refuses or neglects to provide sufficient food, clothes and other necessities for the child; or
 - b) misapplies, misplaces, neglects to recover or to safeguard any asset forming part of the estate of the child, resulting in the loss or damage of such estate; or
 - c) fails to produce to the child justice court or the parent or guardian of the child any account or inventory required by the child justice court; or
 - d) produces any such inventory or account which is false, commits an offence and shall be liable to a fine of K 100,000 and to imprisonment for two years and in addition shall on that account be liable to make good any loss or damage occasioned to the estate.
- Offences by guardians

Division 4 - Fosterage

- 46) (1) The Minister shall establish places or institutions as public foster homes for the purposes of foster care placement.
- (2) All institutions which at the commencement of this Act are operating as public foster homes shall be deemed to have been established under this Act.
- (3) Public foster homes shall be managed by a person appointed by the Minister.
- (4) The establishment of public foster homes under this section shall be by order published in the Gazette.
- (5) The referred to in subsection (4) shall state whether the foster home is for female or male children or for both, and shall specify the number of children to be kept in that home.
- Public foster homes

- 47) (1) A person or an organization may apply to the Minister to appoint a home or place of that person or organization to be a foster home.
- (2) The Minister, upon being satisfied that the application meets the necessary requirements in accordance with this Act, may designate the home or place as a private foster home for the purposes of foster-care placements.
- (3) The establishment of-a private foster home under this section shall be by order published in the Gazette.
- (4) The referred to in subsection (3) shall state whether the home is for female or male children or for both, and shall specify the number of children to be kept in that home.
- Private foster homes

- 48) The provisions on management, inspection and closure of reformatory
- Management of foster homes

- centres and safety homes shall apply to foster homes *mutatis mutandis*.
- 49) A child justice court may, if satisfied that a child before it is in need of foster-care and protection, commit the child to a foster home for a period of time as the court sees fit. Foster home placement
- 50) A manager of a foster home in whose care a child is placed shall have the same rights and responsibilities in respect of the child as the parent of the child while the child remains in the foster home. Responsibilities of a manager of a foster home
- 51) (1) Where a child has been committed to a foster home under this Act, the District Social Welfare Officer, in conjunction with the manager of the foster home may place the child with a foster parent who is willing and has applied to take the care and maintenance of the child for a period not exceeding five years. Commitment of a child to a foster parent
- (2) A foster parent may, at the expiry of the period specified in subsection (1), apply to the District Social Welfare Officer for the extension of the period.
- 52) An application to foster a child shall be made to the District Social Welfare Officer by completing the prescribed Form I in the Second Schedule except that a relative of a child without a parent or guardian may foster the child without first applying to the District Social Welfare Officer. Application to foster a child
Second Schedule
- 53) A foster parent in whose care a child is committed shall, while the child remains in his care, have the same responsibilities in respect of the maintenance of the child as if such foster parent were the parent of the child. Responsibilities of foster parents
- 54) (1) The following persons may apply to be foster parents. Persons qualified to foster children
- a) a husband and wife but if a man has more than one wife, the name of the wife who is to be the foster mother shall be clearly stated; and
- b) a single person not below the age of twenty-five years.
- (2) A single person shall not foster a child of the opposite sex unless a District Social Welfare Officer certifies to the court that it is in the best interest of the child that the person fosters the child.
- (3) Subject to subsections (1) and (2), a non-Malawian citizen residing in Malawi is qualified to apply to be a foster parent.
- 55) (1) A child shall not be placed with a foster parent who is not a relative of the child, unless- Procedure before placement
- a) a social welfare officer has interviewed the prospective foster parent and assessed that he or she is a suitable person to foster a child;
- b) a social welfare officer has visited the home of the prospective foster parent and has confirmed in writing that it is likely to meet the requirements of the particular child and that the conditions in it are satisfactory;
- c) two reputable persons who know the prospective foster parent have confirmed on his or her good character and suitability to care for the child;

- d) it has been established by a social welfare officer that no person in the household of the prospective foster parent is suffering from any physical or mental illness likely to affect the child adversely;
- e) it has been established from the officer-in-charge of a police station in the area that no person in the home has been convicted of a serious criminal offence rendering it undesirable for the child to associate with that person; and
- f) the wishes of the child so far as can be ascertained concerning the proposed fostering have been ascertained and have, so far as practicable, been taken into account.

(2) The social welfare officer concerned with the fostering shall make a written report which shall contain the following-

- g) the information required in section (J);
- h) details of the name, approximate age, religion and employment of the prospective foster parents; and
- i) the number and approximate ages of other persons living in the household of the prospective foster parent.

(3) The report shall be in Form 3 in the Second Schedule.

Second Schedule

56) (1) Where the religion of the child is known, the child shall be placed with a foster parent who is of the same religion as the foster child but where that is not possible, the foster parent shall undertake to bring up the child in accordance with the religious denomination of the child.

Religion

(2) Where a child's religion is not known, the child shall be placed with a foster parent who shall undertake to bring up the child in accordance with the religious denomination of the foster parent, but the child's choice of any other established religion shall be respected.

57) Wherever possible, a child shall be placed with a foster parent who has the same cultural background as the child's parents and who originates from the same area in Malawi as the parents of the child.

Cultural background

58) (1) Each foster parent shall, on the day on which the child is placed with him/her, sign the undertaking specified in Form 2 in the Second Schedule in the presence of a witness.

Undertaking by foster parents
Second Schedule

(2) Where the prospective foster parent cannot read the English language sufficiently to understand the nature of the undertaking, the social welfare officer concerned shall cause the undertaking to be explained to the prospective foster parent in a language which he/she understands and shall certify to that effect as prescribed in Form 2 in the Second Schedule.

Second Schedule

(3) Each foster parent shall be given a copy of the undertaking signed by him.

(4) A copy of the undertaking shall be sent to the District Social Welfare Officer and to the District Commissioner.

- 59) (1) Except in the case of an emergency, a child shall not be placed with a foster parent unless the child has been examined by a medical officer, and has reported to the District Social Welfare Officer in writing on the physical and mental condition of the child.
- (2) In the case of an emergency, the examination report required under subsection (1) shall be made within four weeks after the placement.
- (3) A District Social Welfare Officer shall submit to the foster parent a list of immunizations carried out in respect of the child and indicate to the foster parent the list of other immunizations required to be effected in respect of the child in accordance with the Ministry of Health rules of immunizations and the foster parent shall ensure that those immunizations are carried out.
- (4) The foster parent and the District Social Welfare Officer shall at all times keep a record of the immunizations in respect of the child.
- (5) Where a child placed with a foster parent is under five years of age, the child shall be medically examined by a medical officer-
 - a) within one month after the date of placement; and
 - b) thereafter once every six months until the child attains the age of five years,
 and the District Social Welfare Officer shall, so far as possible, assist the foster parent in ensuring the carrying out of the requirements of this provision.
- (6) Where a child placed with a foster parent is above the age of five years, the child shall be medically examined by a medical officer once in every year.
- (7) The medical officer who examines a child under subsection (5) or (6), shall report in writing to the District Social Welfare Officer by whom the child was placed, on the physical, mental and emotional condition of the child as found by such medical officer.

Medical arrangements

- 60) The District Social Welfare Officer shall be responsible for overseeing all aspects of the fostering and for ensuring that the provisions of this Act are complied with.

Supervising officer

- 61) (1) The District Social Welfare Officer shall visit the foster family and see the child-
 - a) within two weeks after the date of placement of the child with the foster family where the child is under two years of age, and thereafter once every three months;
 - b) within one month after the date of placement of the child with the foster family, where the child is above two years of age, and thereafter once every three months;
 - c) within one month after receiving notification from a foster parent that he or she has changed his or her residence;

Visits during placement

- d) immediately, and in any case not later than one week, after receipt of any information from the child, a foster parent or any other person which indicates the need for the District Social Welfare Officer to visit the child.
- (2) The District Social Welfare Officer shall, after carrying out the visit under subsection (1) make a written report to be placed in the child's case record stating in detail his observations as to the child's welfare, progress and conduct or any changes which have occurred in the circumstances of the foster family.
- (3) The report made under subsection (2) shall also include the child's views and feelings concerning placement and where there are any problems, they shall be discussed and resolved openly within the foster family.
- 62) No foster parent shall marry a child he or she is fostering and any such purported marriage shall be void. Marriages
- 63) (1) A child shall not be allowed to remain with a foster parent where it appears that the placement is no longer in the best interests of the child, except that- Termination of placement
 - a) the foster parent may appeal to the District Social Welfare Officer if it is sought to remove a child who has been in the care of the foster parent for more than twelve months; and
 - b) the District Social Welfare Officer on any such appeal may prohibit or authorize the removal subject to such conditions as he/she thinks fit.
- (2) A child shall not be required to remain in the care of a foster parent after the child has attained the age of sixteen years.
- 64) If at any time a foster parent intends to return a foster child, he or she shall bring the child before the District Social Welfare Officer and the District Social Welfare Officer shall place the child in a foster home. Surrendering a foster child
- 65) If a foster child is seriously ill, the foster parent shall as soon as possible give notice to the District Social Welfare Officer who shall in turn notify the parents or guardians of the illness. Illness of foster child
- 66) (1) If the foster child dies, the foster parent shall make every effort to obtain a medical certificate of death and post-mortem report and shall, within forty-eight hours, after the death notify the social welfare officer who shall, in turn notify the parents of the death. Death of foster child
 - (2) If the foster parent dies, in the case where a child is placed with a single foster parent, the child shall be returned to the social welfare office or to the manager of the foster home from which the child was received.
- 67) (1) The District Social Welfare Officer shall maintain a register of foster parents, in which shall be stated a record set out in Form 3 in the Second Schedule. Records
Second Schedule
 - (2) The register referred to in subsection (1) shall, in addition, contain-
 - a) a statement of the name, sex, age, religion and address of each parent

- of the foster child if known; and
- b) the date of placement, the date of termination and the reason for termination.
- (3) The District Social Welfare Officer shall also, in respect of each child placed by him in a foster home, maintain a foster child case record in the form set out in Form 4 in the Second Schedule. *Second Schedule*
- (4) The District Social Welfare Officer shall also keep with the foster child case record the following-
- a) a copy of the application form completed by the foster parent and a copy of the undertaking required by section 59; and
- b) reports made under section 62.
- (5) The register prescribed by subsection (1) and the foster child case record made under subsection (3) may be inspected at any reasonable time by the Board.
- (6) Every foster child case record made under this section shall be preserved for at least seven years after the child to whom it relates has attained the age of sixteen years or has died or has returned to the care of his or her parents.
- (7) The District Social Welfare Officer shall report to the Board within one month after each fostering effected by him, the fact of the fostering and stating the information in Form 3 in the Second Schedule. *Second Schedule*
- (8) The District Social Welfare Officer shall also notify the Board within twenty-one days after its occurrence of any change in the information referred to in subsection (7).
- 68) A foster parent may at any time apply to adopt a foster child in accordance with the Adoption of Children Act. Application for adoption Cap. 26:01
- 69) A person who- Offences
- a) refuses to allow a foster child to be visited by persons authorized by either the District Social Welfare Office or the child justice court;
- b) fails, without reasonable excuse, to comply with any requirement under the Act;
- c) accommodates a foster child in undesirable premises;
- d) marries a child who is under foster care;
- e) runs a foster borne without the approval of the Minister,
- commits an offence and shall be liable to a fine of K50,000 and imprisonment for one year.

Division 5 - Support for Children by Local Authorities

- 70) (1) It is the general duty of every local government authority within its area of jurisdiction to- General functions of local government authorities

- a) safeguard and promote the welfare of children;
- b) mediate in any situation where the rights of a child are infringed, especially the child's right to succeed to property of his parents and all the rights accorded to the child by this Act;
- c) provide and maintain sufficient and appropriate recreational facilities;
- d) conduct inspection of child care facilities to ensure maintenance of standards; and
- e) inspect structures, places and activities that impose potential or actual harm to children.

(2) The power conferred by subsection (1) on a local government authority to protect the right of a child to succeed to property of his parents shall not be construed to authorize the authority to distribute such property.

71) (1) A local government authority shall designate one of its officers to be the person responsible for the welfare of children and such officer shall be referred to as the Secretary for Children's Affairs. Secretary for children affairs

(2) The Secretary for Children's Affairs shall, in the exercise of his or her functions in relation to the welfare of children, be assisted by such other officers of the local government authority as the local government authority may determine.

72) A local government authority shall keep a register of children with disabilities within its area of jurisdiction and give assistance to them whenever possible in order to enable those children grow up with dignity among other children and to develop their potential and self-reliance. Registration of children with disabilities

73) A local government authority shall provide accommodation for children within its area of jurisdiction who appear to the authority to be in the need of accommodation as a result of their being lost or abandoned or seeking refuge. Duty to provide accommodation to children in need

74) A local government authority shall make every effort, including publication through the mass media, to trace the parents or guardians of any lost or abandoned child or to return the child to the place where the child ordinarily resides; and, where the authority does not succeed, it shall refer the matter to a probation officer or social welfare officer or to the police. Tracing of parents or guardians

75) (1) It shall be the duty of any member of the community who has evidence that a child's rights are being infringed or that a parent, guardian or any person having custody of a child, who is able to but refuses or neglects to provide the child with adequate food, shelter, clothing, medical care or education, to report the matter to the local government authority of the area. Duty to report infringement of a child's right

(2) The Secretary for Children's Affairs may, upon receiving the report, summon the person against whom the report was made under subsection (1) to discuss the matter; and a decision shall be made by the Secretary for Children's Affairs in the best interests of the child.

(3) Where the person against whom the report was made refuses to com-

ply with the decision made under subsection (2), the Secretary for Children's Affairs shall refer the matter to child justice court which may make such orders as it may see fit.

- 76) (1) Unless the duty to do so has been conferred on another authority, a local government authority shall keep and maintain a register of the births and deaths of children in the area of its jurisdiction. Registration of births and deaths of children
- (2) The registration of the birth or death of a child under this section shall be with sufficient particulars including in particular-
- a) the name and gender of the child;
 - b) the name of the parents of the child;
 - c) place of birth and the home of origin of the child; and
 - d) in the case of death, the place of death and, where possible, the cause of the death of the child.
- 77) (1) A local government authority shall keep a register of children suffering from HIV and AIDS for the purposes of ensuring that children- Registration of children affected by HIV and AIDS
- a) are not discriminated against on the basis of their status;
 - b) have equal access to social services including, health care services regardless of their status;
 - c) are provided with the necessary material support if required; and
 - d) in conjunction with the District Social Welfare Officer, they are provided with substitute care in the form of-
 - i) care by relatives;
 - ii) foster-care; or
 - iii) adoption.
- (2) For the purposes of this section, children affected by HIV and AIDS means children who are.
- a) infected by HIV;
 - b) orphaned by AIDS;
 - c) vulnerable to HIV infection; or
 - d) from infected families and facing increased financial, physical and emotional burdens.

Division 6 - Protection of Children from Undesirable Practices

- 78) (1) A person who, unlawfully takes, retains or conceals a child without the consent of the parent or without the consent of any other person who has lawful custody of the child commits an offence and shall be liable to imprisonment for ten years. Child abduction
- (2) For the purposes of this section, lawful custody may be conferred on a person by-

- a) the operation of any written law;
 - b) judicial or administrative decision; or
 - c) a lawful agreement.
- 79) (1) A person who takes part in any transaction the object or one of the objects of which is child trafficking commits an offence and shall be liable to imprisonment for life. Child trafficking
- (2) For the purposes of this section, child trafficking means the recruitment, transaction, transfer, harbouring or receipt of a child for the purposes of exploitation.
- 80) No person shall subject a child to a social or customary practice that is harmful to the health or general development of the child. Harmful cultural practices
- 81) No person shall- Forced marriage or betrothal
- a) force a child into marriage; or
 - b) force a child to be betrothed.
- 82) No person shall- Pledge of a child as security
- a) sell a child or use a child as a pledge to obtain credit;
 - b) use a child as surety for a debt or mortgage; or
 - c) force a child into providing labour for the income of a parent, guardian or any other person.
- 83) A person who contravenes sections 80, 81 and 82 commits an offence and shall be liable to imprisonment for ten (10) years. Offences
- 84) (1) A social welfare officer who has reasonable grounds to believe that a child- Inquiries and placements
- a) has been trafficked;
 - b) has been abducted;
 - c) has been subjected to a harmful cultural practice or any practice prohibited under sections 81 and 82; or
 - d) is being used for the purposes of prostitution or immoral practices,
- may remove and temporarily place the child in a place of safety.
- (2) A child who is temporarily placed in a place of safety, under this Division shall be brought before a child justice court within forty-eight hours if it is practicable to do so.
- (3) The child justice court may commit the child to a foster home or may place the child under the supervision of a social welfare officer until an inquiry into the circumstances of the case has been carried out and submitted to the child justice court by a social welfare officer.
- (4) The social welfare officer shall complete the inquiry under subsection (3) and submit a report of the inquiry to the child justice court within one month from the date of placing the child into a place of safety.

(5) The child justice court may, after considering the report and if satisfied that the child is in need of protection and rehabilitation-

- a) commit the child to a foster home; and
- b) make an order placing the child under the supervision of a social welfare officer,

for such period as the court thinks fit.

(6) The child justice court may, in the best interests of the child, extend the period of the placement or the supervision, but such extension shall not go beyond the sixteenth birthday of the child.

(7) If the child justice court is not satisfied that the child is in need of protection or rehabilitation, it may order that the child be returned to the custody of the parent, guardian or any other person who had custody of the child.

85) (1) If it appears to a child justice court that there are reasonable grounds to believe that a child has been abducted or trafficked, it may make a child recovery order. Child recovery order

(2) A child recovery order may be made by a child justice court on the application by or on behalf of a person having lawful custody of the child.

(3) A child recovery order may-

- a) direct any person who is in a position to do so to take the child to a person specified in the order;
- b) authorize a person specified in the order to remove the child from the unlawful custody;
- c) require any person who has information that can assist in the recovery of the child to disclose that information to a person specified in the order; or
- d) authorize any police officer to enter premises specified in the order and search for the child.

(4) A person who knowingly obstructs an authorized person from exercising the power under subsection (3) commits an offence and shall be liable to imprisonment for three years.

PART III - CHILDREN SUSPECTED TO HAVE COMMITTED OFFENCES

Division I - General Principles

86) The words "finding of guilty", "conviction" and "sentence" shall not be used in respect of any child in proceedings in a child justice court or any other court, but in pronouncing the conviction against the child, the court shall record that the child is found to be responsible for the offence charged and, instead of sentencing the child, the court shall proceed to make an order upon such a finding in accordance with this Act. Mode of pronouncing a finding against a child

87) Save as provided in section 105 a finding of responsibility for an offence against a child shall have no effect whatsoever against the child for the Non-effect of finding against a

- purposes of any law except in respect only of the offence for which the child is found responsible and in respect of such offence, the finding shall elapse upon the child serving the order. child
- 88) A court, when dealing with a child who is brought before such court either as an offender or in need of care or protection, shall- General consid-
eration
- a) in a proper case, take steps for removing him or her from undesirable surroundings and for securing that proper provision is made for his or her nutrition, education, and training; and
- b) give primary consideration to the rights of the child as recognized by the Convention on the Rights of the Child set out in the Third Schedule. *Third Schedule*
- Division 2 - Methods of Bringing a Child Offender Before a Court or Other Inquiry***
- 89) In addition to the provisions of the Criminal Procedure and Evidence Code or of any other written law relating to the arrest of a child, a police officer or any person arresting the child or the person who appears to be a child shall- Arrest of a child
Cap. 8:01
- a) have due regard to the observance of the principle of the best interests of the child as well as the general welfare of the child; and
- b) make the arrest in accordance with the guidelines set out under this Division
- 90) A police officer or any person effecting the arrest of a child shall ensure that- Guidelines on
arrest of children
- a) the child has been informed of his or her rights in relation to the arrest or detention and the reasons for the arrest in a manner appropriate to the age and understanding of the child;
- b) there is no harassment or physical abuse of the child';
- c) the child is provided with medical attention where necessary;
- d) there is no use of handcuffs, except if the child is handcuffed to the arresting police officer or the person effecting the arrest;
- e) the child is not mixed with adults;
- f) the child is provided with nutritious food;
- g) child is accompanied by a parent, guardian or appropriate adult as far as it is practicable to do so;
- h) a parent, guardian or appropriate adult is informed immediately after the arrest if such parent, guardian or appropriate adult was not present at the time of the arrest;
- i) in serious offences, the child is provided with legal representation; and
- j) the child has been provided with counselling services where possible.
- 91) Where summons have been used for the purposes of bringing a child be- Summons

fore a court, the summons shall-

- a) be issued by a court of competent jurisdiction;
 - b) be served on the child, or parent, guardian, or the next of kin of the child; and,
 - c) be served on a day and time that ensures due consideration of the best interests of the child.
- 92) Where an arrest of a child is made by a private person, that person shall present the child to a police officer or to the nearest police station or court as soon as it is practicable to do so, but no later than twenty-four hours after the arrest. Arrest of a child by a private person
- 93) (1) Where a child is arrested or summoned, the officer-in-charge of the police station shall as soon as it is practicable, refer the child to a probation officer. Reference to a probation officer
- (2) Where a police officer has reason to believe that a child suspected of having committed an offence is below the age of ten (10) years he or she shall not arrest the child, but shall refer such child to a probation officer for the estimation of age.
- (3) Where a child has been referred to a probation officer under subsection (1), the probation officer shall assess the child for the purposes of-
- a) establishing the possibility of diverting the case;
 - b) determining whether the child is in need of care and protection;
 - c) age estimation, if the age is not known;
 - d) formulating recommendations regarding
 - i) release of the child with or without bail;
 - ii) release into the care of a parent, guardian or an appropriate adult; or
 - iii) detention pending a preliminary inquiry.
- (4) The probation officer shall submit the assessment report containing the recommendations in respect of the child to the prosecutor handling the matter.
- (5) The prosecutor may, upon consideration of the recommendations.-
- a) release the child with or without bail
 - b) release the child into the care of a parent, guardian or an appropriate adult; or
 - c) detain the child.
- (6) Where the charges have not been withdrawn, the prosecutor shall make arrangements for a preliminary inquiry.
- (7) Where the probation officer estimates that the age of the child is below ten years, he or she shall recommend that the child be released for

want of criminal responsibility.

(8) Where it is not possible to refer the child to a probation officer or where the reference may cause unnecessary delays, the prosecutor handling the matter may-

- a) take the child to a safety home and arrange for a preliminary inquiry within forty-eight hours; or
- b) release the child in accordance with section 15.

94) (1) A police officer of the rank of sub-inspector and above may caution a child offender against the repetition of the crime and release the child with or without conditions if-

Police powers to caution and re-lease

- a) the offence alleged to have been committed is not a serious offence;
- b) there is enough evidence to warrant prosecution in the case; and
- c) the child voluntarily admits responsibility for the offence.

(2) A police officer imposing a condition under this section shall take into account the best interests of the child and the condition shall not be penal in nature.

(3) The caution and release of a child shall be administered in the presence of a parent or guardian, or an appropriate adult or a probation officer, unless the police officer considers it to be in the best interests of the child to dispense with this requirement.

(4) A police officer shall, when cautioning and releasing a child, take into account-

- a) the circumstances in which the offence was committed;
- b) the views of the victim or complainant;
- c) personal conditions of the arrested child, including age, physical or mental infirmity, general character and family circumstances; and
- d) the views of the parent, guardian or appropriate adult of the child.

(5) The Chief Justice may, unless satisfied that the rules made under section 32 of the Criminal Procedure and Evidence Code are sufficient for the purposes of this Act, make rules prescribing guidelines for the police on the exercise of powers referred to in this section.

Cap. 8:01

Division 3-Detention Before a Finding Against a Child

95) (1) No child shall be detained before a finding against him/her unless the Director of Public Prosecutions, in writing or upon hearing, satisfies the inquiry magistrate or court that-

Restriction on detention before a finding against a child

- a) the prosecutor wishes to charge the child with a serious offence in respect of which there is sufficient evidence to prosecute;
- b) it is necessary in the interest of such child to remove him from undesirable circumstance; or
- c) the prosecutor has reason to believe that the release of such child

would defeat the ends of justice.

- (2) Where a child is detained pending a preliminary inquiry, the child shall as soon as it is reasonably possible, but not later than forty-eight hours after the arrest, or if the period of forty-eight hours expires outside ordinary court hours or on a day which is not a court day, the first court day after such expiry, be brought before an inquiry magistrate for purposes of conducting a preliminary inquiry, failing which the child shall, subject to section 15, be released.
- 96) (1) Where a decision has been made to detain a child before a finding against the child, the child shall, subject to subsection (1), be detained in a safety home. Places of detention before a finding against a child
- (2) Where a decision has been made to detain a child in accordance with subsection (1) and the officer-in-charge of a police station responsible for the child or the prosecutor is of the opinion that-
- a) it is impracticable to do so;
 - b) the child is of unruly or depraved character that he or she cannot be safely so detained;
 - c) by reason of the state of health or mental or physical condition of the child, it is not advisable so to detain the child; or
 - d) the detention is not otherwise in the best interests of the child,
- the officer-in-charge or prosecutor shall immediately apply to the inquiry magistrate, child justice court or any other court that made the order for any necessary alternative order.
- (3) When making the alternative order under subsection (2), the inquiry magistrate or the court shall consider the following options-
- a) parenting order;
 - b) hospital order;
 - c) home confinement order; or
 - d) reformatory centre order.
- (4) An order made under this section may be varied or revoked by any court and if so revoked the provisions of this section shall apply.
- 97) No child, while in detention in a safety home or reformatory centre or while being conveyed to or from any court or while awaiting before or after attending a criminal court, shall be permitted to associate with an adult, not being a relative, who is charged with an offence other than the offence with which the child is jointly charged with the adult. Child not to associate with adult offenders
- 98) (1) Where a child or a person who appears to be a child is apprehended with or without a warrant and cannot be brought forthwith before an inquiry magistrate, the officer-in-charge of the police station to which such person is brought shall, unless-
- a) the charge is one of homicide or any offence punishable with impris-
- Bail of children

onment for a term exceeding seven years;

- b) it is necessary in the interest of such person to remove the person from undesirable circumstances; or
- c) the officer has reason to believe that the release of the person shall defeat the ends of justice,

release the person on a recognizance being entered into by the person or by his/her parent, guardian or appropriate adult with or without sureties to secure the attendance of the person upon the hearing of the charge.

(2) Where a child or a person who appears to be a child is released on bail under subsection (1), no monetary payments shall be attached or ordered as a condition for granting the bail.

(3) The provisions of the Bail (Guidelines) Act shall, in so far as they are consistent with the provisions of this Act, apply when granting bail under this section.

Cap. 8:05

Division 4 - Preliminary Inquiry

- 99) (1) A preliminary inquiry shall be held in respect of a child suspected to be responsible for an offence prior to plea unless the child has been released on caution or the charge has been withdrawn.
- (2) A magistrate of the second grade or above may preside over a preliminary inquiry and while so presiding shall be called an "inquiry magistrate" for the purposes of this Act.
- (3) The appearance of a child before a preliminary inquiry shall be regarded as his or her first court appearance for the purposes of this Act.
- (4) The objectives of a preliminary inquiry are to-
- a) ascertain whether a probation officer has made a social inquiry of the child and, if not, whether compelling reasons exist for not making such an inquiry;
 - b) establish whether the matter can be diverted before plea;
 - c) identify a suitable diversion option if the matter is to be diverted;
 - d) ensure that all available information relevant to the child, his or her circumstances and the offence is considered in order to make a decision on diversion and placement of the child;
 - e) establish whether the matter should be referred to the child justice court to be dealt with in accordance with the provisions of this Act;
 - f) provide an opportunity for the prosecutor to assess whether there are sufficient grounds for the matter to proceed to trial;
 - g) encourage participation of the child and his or her parent, guardian, or appropriate adult in decisions concerning the child;
 - h) to ensure that views of persons concerned and present are considered before a decision is taken;

Nature and objectives of a preliminary inquiry

- i) determine release or placement of the child in accordance with the provisions of this Act pending conclusion of the preliminary inquiry or appearance of the child in a court; and
- j) take such other measures as may be necessary for the final disposition of the case.
- (5) A preliminary inquiry shall be held in camera at any suitable place that the inquiry magistrate shall deem fit.
- (6) The inquiry magistrate shall conduct the proceedings in an informal manner.
- 100) (1) Subject to subsection (2), persons who shall attend a preliminary inquiry are-
- a) the inquiry magistrate;
- b) the prosecutor;
- c) the child;
- d) the parent or guardian of the child, if available;
- e) the probation officer;
- f) any other person served with a subpoena or requested by the inquiry magistrate to attend the preliminary inquiry; and
- g) an appropriate adult in the absence of a parent or guardian.
- (2) In exceptional circumstances as determined by the inquiry magistrate, a preliminary inquiry may proceed in the absence of any of the persons referred to in subsection (1) (d), (e) and (f).
- (3) Where a preliminary inquiry proceeds in the absence of a probation officer, the officer's social report must be available at the preliminary inquiry unless assessment has been dispensed with in accordance with section 103 (3).
- (4) An inquiry magistrate may, if he considers it to be in the best interests of the child, exclude the persons referred to in subsection (1) (d) from attending a preliminary inquiry.
- 101) Persons who may attend a preliminary inquiry are-
- a) the legal representative of the child if one has been appointed;
- b) the arresting police officer, the investigating police officer or any other police officer;
- c) an appropriate adult whether a parent is present or not; and
- d) any other persons permitted to attend the preliminary inquiry by the inquiry magistrate.
- 102) (1) At the start of the preliminary inquiry, the inquiry magistrate shall-
- a) explain the purposes of the preliminary inquiry and the role of each person present in an official capacity;

Persons who shall attend a preliminary inquiry

Persons who may attend a preliminary inquiry

Procedure relating to holding of a preliminary inquiry

- b) inform the child the nature of the allegations;
 - c) inform the child of his or her rights in a manner appropriate to the age and understanding of the child; and
 - d) explain to the child the immediate procedures to be followed in accordance with the provisions of this Act.
- (2) At the start of the preliminary inquiry, the prosecutor shall ensure that the inquiry magistrate has the probation officer's social inquiry report and a completed age estimation form with all relevant documents attached.
- (3) Where a child does not admit responsibility for the alleged offence, no further questions regarding the offence shall be put to the child and the inquiry magistrate shall set the matter down for plea and trial in a child justice court and the preliminary inquiry shall be closed.
- (4) A record shall be kept of the proceedings of the preliminary inquiry.
- (5) No decision taken at a preliminary inquiry shall be subject to appeal, save for a decision by the inquiry magistrate to detain a child in a safety home.
- 103) (1) The inquiry magistrate may-
- a) cause a subpoena to be served on any person whose presence is necessary for the conclusion of the preliminary inquiry;
 - b) request or permit the attendance of any other person who may be able to contribute to the proceedings;
 - c) request any further documentation or information which is relevant or necessary to the proceedings;
 - d) make a determination of age in accordance with section 124;
 - e) after consideration of the information contained in the social report, elicit any information from the persons attending the inquiry to supplement or clarify the information in the social report;
 - f) take necessary steps to establish the truth of any statement or the correctness of any submission provided that such steps shall not unduly influence the child to accept responsibility of the alleged offence; and
 - g) perform any other duties necessary for the final disposition of the case.
- (2) The inquiry magistrate may, where the conduct of the proceedings of the preliminary inquiry or any aspect is in dispute, rule on the conduct of the proceedings in a manner consistent with the provisions of this Act.
- (3) If it is ascertained that a social inquiry has not yet been conducted, the inquiry magistrate may adjourn the preliminary inquiry in accordance with section 107 (1) (f) pending such social inquiry or may dispense with the social inquiry if it is in the best interests of the child to do so.
- (4) The inquiry magistrate shall ensure that the persons present at the inquiry know of the recommendations in the probation officer's social in-

General powers
and duties of an
inquiry magis-
trate

quiry report.

(5) Where the probation officer is present at a preliminary inquiry, the inquiry magistrate may request the probation officer to explain, elaborate upon or justify any recommendation or statement made in the social inquiry report or provide additional information.

(6) The inquiry magistrate shall permit any person present to challenge the correctness of any statement made in the social report of the probation officer.

(7) The inquiry magistrate shall ensure that the persons present at the preliminary inquiry are informed of diversion options available in the District or area.

(8) The inquiry magistrate shall consider reports regarding arrest and detention of the child.

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| 104) | The inquiry magistrate may make an order regarding the release or detention of the child pending further appearance of the child at a preliminary inquiry or court where- | Release or detention of a child by inquiry magistrate |
| | a) the preliminary inquiry is adjourned; or | |
| | b) the matter is to be set down for plea and trial in a child justice court or in any other court. | |
| 105) | (1) Where a child has admitted responsibility for the offence, information regarding a previous diversion or finding of a previous responsibility may be furnished at the preliminary inquiry by any person for the purpose only of assisting the inquiry magistrate to reach a proper decision regarding diversion. | Evidentiary matters |
| | (2) No self-incriminating information furnished at a preliminary inquiry by the child shall be admissible in any subsequent court proceedings. | |
| 106) | (1) Subject to section 100 (1) (f), if a child in respect of whom a preliminary inquiry is held, is co-accused with an adult, the adult shall be excluded from the preliminary inquiry. | Separation and joinder of proceedings of a preliminary inquiry |
| | (2) If a child in respect of whom the holding of a preliminary inquiry is contemplated is a co-accused with one or more other children, a joint preliminary inquiry may be held. | |
| | (3) Where a joint preliminary inquiry is held, different decisions may be made in respect of each accused child. | |
| 107) | (1) The inquiry magistrate may on his own motion or upon request, adjourn the proceedings of a preliminary inquiry for a period of not exceeding seven days for the purposes of- | Adjourning a preliminary inquiry |
| | a) securing the attendance of a person necessary for the conclusion of the inquiry; | |
| | b) obtaining information necessary for the conclusion of the inquiry; | |
| | c) establishing the attitude of the victim to diversion or a diversion op- | |

- tion;
- d) planning a diversion option;
 - e) finding alternatives to pre-trial residential detention;
 - f) conducting of a social inquiry of the child, where no social inquiry has previously been undertaken and it is found that such inquiry should not be dispensed with;
 - g) conducting a further social inquiry of the child where the inquiry magistrate is satisfied that there are exceptional circumstances warranting the inquiry;
 - h) holding an identification parade; and
 - i) any other reason considered to be necessary by the inquiry magistrate.
- (2) Where the preliminary inquiry is adjourned for the purposes of holding an identification parade, the inquiry magistrate shall inform the child of the need to have a parent, a guardian, an appropriate adult or legal representation during such proceedings.
- (3) If the matter upon which the adjournment was granted has not been concluded upon the expiry of the period of seven days the preliminary inquiry shall be re-convened and section 110 shall apply.
- 108) A child or his parent, guardian or an appropriate adult who fails to comply with the conditions of the release of the child pursuant to an adjournment of a preliminary inquiry shall be liable to arrest upon a warrant issued by the court for such person to be brought before the court to show cause for failure to comply and the court shall make a necessary order. Failure to comply with conditions pursuant to adjournment of a preliminary inquiry
- 109) Where a child or his/her parent, guardian, or appropriate adult has been notified to appear at a preliminary inquiry by a police officer or by a probation officer and such child, parent, guardian or appropriate adult fails to attend, such person shall be compelled to attend as if he/she had been summoned by the inquiry magistrate. Failure to appear in a preliminary inquiry
- 110) (1) After consideration of-
- a) the social inquiry report, unless the report has been dispensed with;
 - b) the views of the persons at the preliminary inquiry;
 - c) any further information provided by any person present at the preliminary inquiry;
 - d) any further information requested or elicited; and
 - e) the willingness of the child to admit responsibility for the offence,
- the inquiry magistrate shall ascertain from the prosecutor whether the matter can be diverted. Decisions regarding diversion, withdrawal of prosecution charges or transfer to it child justice court
- (2) Where the prosecutor decides that the matter should be diverted, he or she shall withdraw the charge or charges against the child with or without

conditions.

(3) Where the prosecutor decides that the matter be diverted, the inquiry magistrate shall-

Fifth Schedule

a) make an order regarding-

i) an appropriate diversion option or options as set out in the Fifth Schedule; and

ii) implementation of the diversion option or options; or

Fifth Schedule

b) refer the matter to a child panel.

(4) In addition to the diversion options set out in the Fifth Schedule, the inquiry magistrate may, after consultation with the persons present at the preliminary inquiry, develop an individual diversion option that meets the purposes and standards applicable to diversion set out under Division 4 and the implementation thereof.

(5) Where the inquiry magistrate has reason to believe that the child is in need of care and protection, he or she may order that the preliminary inquiry be closed and the matter be dealt with in accordance with the provisions on care and protection under this Act.

(6) Where the prosecutor decides to proceed with the prosecution of the child, he/she shall inform the inquiry magistrate and the preliminary inquiry shall be closed and the matter shall be set down for plea and trial in a child justice court, or any other court of competent jurisdiction within fourteen days after conclusion of the preliminary inquiry.

(7) The prosecutor may withdraw the charge at any time during the preliminary inquiry.

111) (1) Where the matter has been referred to court and the child has no legal representation, the inquiry magistrate shall explain to the child, parent, guardian or an appropriate adult the provisions on legal representation under this Act.

Procedure upon referral of matter to court

(2) Where the child, or any of the persons referred to in subsection (1) indicates an intention to apply for legal representation at State expense in accordance with section 127, the inquiry magistrate shall assist the child, as far as is reasonably possible to make an application for legal aid at State expense.

(3) Where the child is in a safety home, the inquiry magistrate shall-

a) inform the child, his parent, guardian, or appropriate adult to attend such proceedings at the time and place as advised by the court or prosecutor; and

b) direct the person in charge of the safety home to bring the child to court at the specified time and place, or may-

i) direct the release of the child on bail;

ii) make any other order in accordance with the provisions of this

Act.

(4) Where the child is not in detention, the inquiry magistrate shall warn the child, his parent, guardian or the appropriate adult to appear in court at a specified place and time and may-

- a) alter or extend any conditions imposed before or during the preliminary inquiry;
- b) where necessary, order that the child be detained.

(5) Where the matter has been set down for plea and trial the prosecutor shall inform the child, parent, guardian or appropriate adult of the place and time.

(6) The inquiry magistrate who presides over a preliminary inquiry shall not preside over any subsequent trial emanating from that inquiry.

Division 5 - Diversion

- | | | |
|------|---|---|
| 112) | A child suspected of being responsible for an offence shall be considered for diversion if- | Diversion to occur in certain circumstances |
| | <ul style="list-style-type: none"> a) such child admits responsibility for the alleged offence without undue influence; b) the child understands his right to remain silent; c) there is sufficient evidence to prosecute the child; d) the diversion process and options have been explained to the child, his/her parent, guardian or appropriate adult and such child or his parent, guardian or appropriate adult, if such person is available, consents to the diversion process: and e) the offence is not one of the offences specified in the Fourth Schedule. | Fourth Schedule |
| 113) | <p>(1) For the purposes of this Division categories and the range of diversion options are set out in the Fifth Schedule.</p> <p>(2) In selecting a specific diversion option for a particular child at a preliminary inquiry or in a court, consideration shall be given to-</p> <ul style="list-style-type: none"> a) the selection of a diversion option from an appropriate category in accordance with the Fifth Schedule: b) the cultural, religious and linguistic background of the child; c) the educational level, cognitive ability, domestic and environmental circumstances of the child: d) the proportionality to the offence of the option recommended or selected; e) the interest of society; f) the child's age and developmental needs; g) whether the child is a repeat offender; and | <p>Diversion options
Fifth Schedule</p> <p>Fifth Schedule</p> |

- h) any other peculiar circumstances relating to the child;
- (3) The Minister may, on the recommendation of the Board, prescribe additional suitable diversion options consistent with the provisions of this Division.
- 114) (1) No child shall be excluded from a diversion option on account of inability to pay a fee or charge required for such programme.
- (2) A child shall not be required to perform community service or any other service other than service done in homes, vocational technical schools or other training institutions, as an element of diversion.
- (3) Diversion options shall-
- a) promote the dignity and well-being of the child, and the development of his or her sense of self-worth and ability to contribute to society;
 - b) not be exploitative, harmful or hazardous to the physical, mental, spiritual and social development of the child;
 - c) be appropriate to the age and maturity of the child; and
 - d) not interfere with the education of the child.
- (4) Diversion options shall, where reasonably possible-
- a) impart useful skills;
 - b) include restorative justice element which aims to heal relationships, including the relationship with the victim;
 - c) include an element which seeks to ensure that the child understands the impact of his behaviour on others, including the victims of the offence. and may include compensation or restoration; and
 - d) be provided in a location reasonably accessible to the child, and a child who cannot afford transport in order to attend a selected diversion programme should, as far as is reasonably possible, be provided with the means to do so by an authority or person identified at a preliminary inquiry or identified by a child panel.
- 115) (1) Every institution that provides for diversion options in a predetermined and regular basis shall be registered with the Minister.
- (2) For the purposes of subsection (1), every such institution shall specify the particulars of the diversion option provided at the institution and any variations of the option or any additional option shall be notified to the Minister for registration.
- 116) (1) There shall be a child panel within the jurisdiction of each second grade magistrate court which shall be responsible for-
- a) devising diversion option or diversion options; and
 - b) implementing the diversion option or the diversion options, for child offenders in that area.
- (2) A child panel shall be composed of persons nominated by the proba-

Minimum standards applicable to diversion

Registration of diversion programmes

Establishment of child panels

tion officer from amongst individuals in the community representing the following-

- a) the faith community;
- b) the local government;
- c) chiefs;
- d) teachers; and
- e) health workers.

(3) If an area is served by a chief, the probation officer shall consult the chief before nominating members of the child panel.

(4) Members of a child panel shall perform the functions on voluntary basis and shall hold the position for a period of three years subject to re-nomination.

(5) A person nominated to fill a vacancy on a child panel shall serve for the remainder of the term and shall be eligible for re-nomination.

(6) The probation officer shall act as secretary during the proceedings of a child panel.

(7) A child panel may co-opt any reputable person to assist in the proceedings.

- 117) (1) Subject to this section a child panel shall regulate its own procedure and shall make diversionary plans as it deems fit.
- (2) Where a child has been referred to a child panel, a probation officer shall be notified in writing of such referral by the inquiry magistrate or court responsible for the referral of the child.
- (3) Upon receipt of the notice, the probation officer or a person designated by him shall convene a child panel within fourteen days after such receipt by-
- a) setting the time and place of the panel; and
 - b) notifying all members of the child panel.
- (4) Failure to notify any person under subsection (3) shall not affect the validity of the proceedings of the child panel unless the failure is likely to materially affect the outcome of the proceedings.
- (5) Where proceedings of a child panel fail to take place, the probation officer shall arrange for an alternative date and shall notify all members of the child panel.
- (6) The plan made by the child panel may include-
- a) the application of any diversion option contained in the Fifth Schedule; and
 - b) any other resolution appropriate to the child, his family and to the local circumstances which is consistent with the principles contained in this Act.

Procedure of
child panels

Fifth Schedule

- (7) A plan made by a child panel shall-
- a) specify the objectives of the plan and the period within which they are to be delivered;
 - b) contain details of the services and assistance to be provided for the child and for a parent or a guardian;
 - c) specify the persons or organizations to be provided with such services and assistance;
 - d) state the responsibilities of the child and of the child's parent or guardian; and
 - e) include such other matters relating to education, employment, recreation and welfare of the child, as may be relevant.
- (8) The probation officer shall record, with reasons, any plan formulated at a child panel and shall furnish a copy of such record to-
- a) the child, parent, guardian or appropriate adult; and
 - b) any person entrusted to monitor the implementation of the selected diversion option.
- (9) A probation officer shall, within seven days, submit a record of the child panel proceedings to the inquiry magistrate or the court which referred the child to the panel.
- (10) If no agreement on the plan is reached, the proceedings shall be closed and the probation officer shall, within forty-eight hours, refer the matter back to the inquiry magistrate or the court for further consideration.
- (11) The proceedings of a child panel shall be confidential and statements made by any person shall not be used as evidence in any subsequent proceedings before any court.
- 118) (1) Where a victim-offender mediation or restorative justice process has been selected as a diversion option, a probation officer shall convene the mediation and shall regulate its procedure as he deems fit.
- (2) If the process fails whether for the reason that the victim has not accepted the mediation or for any other reason, the probation officer shall refer the matter back to the preliminary inquiry, the court or the child panel as the case may be, for an alternative diversion option.
- 119) (1) If a child who has been referred to diversion fails to comply with any order relating to the diversion, the inquiry magistrate may, upon being notified in writing of the failure by the person entrusted to monitor the child or by a probation officer, issue a warrant of arrest or a written notice in respect of the child to appear before the inquiry magistrate or the court.
- (2) When a child appears before an inquiry magistrate or court pursuant to a warrant of arrest or a written notice to appear issued under subsection (1), the inquiry magistrate or court shall inquire as to the reasons for the child's failure to comply with the diversion order.

Victim-offender
mediation or
other restorative
justice

Failure to comply
with diversion
orders

- (3) The inquiry magistrate may, after consideration of the views of any person present at the inquiry-
- a) apply the same option with altered conditions;
 - b) apply any other diversion option as described in the Fifth Schedule;
 - c) make an appropriate order which shall assist the child or his or her parents, guardian or appropriate adult to comply with the diversion option initially applied; and
 - d) recommend to the prosecutor that the matter be taken to trial, in which case the matter shall be set down for plea.
- (4) The execution of a warrant of arrest under this section may be suspended by the inquiry magistrate or the court and the police officer required to execute the warrant may, instead of arresting a child, invite him with a written notice to appear before him for an assessment.
- 120) Upon the selection of a diversion option in accordance with this section, an inquiry magistrate, a court or a child panel shall identify a probation officer or any suitable person to monitor the implementation of the selected diversion option.
- 121) The Board shall keep and maintain a register of children diverted from prosecution.

Fifth Schedule

Monitoring programmes of diversification

Keeping of records

PART IV - DETERMINATION OF AGE OF A CHILD

- 122) The provisions of this Part shall apply to the determination of age for the purposes of criminal responsibility under section 14 of the Penal Code and for the purposes of this Act.
- 123) (1) For the purposes of determining the age of a child, a probation officer shall obtain any relevant information as regards the age of the child concerned and complete an age estimation form.
- (2) If the age of a child brought before a probation officer is not known, the probation officer shall make an estimation of the age of that child.
- (3) In making an estimation of the age of a child the information available shall be considered in the following order of cogency-
- a) a birth certificate;
 - b) a previous determination of age under this Act;
 - c) statements from a parent, guardian, or person likely to have direct knowledge of the age of the person;
 - d) a baptismal certificate or other religious records, school registration forms, school reports, under-five clinic cards and other information or document of a similar nature if relevant to establishing a probable age;
 - e) an estimation of age by a medical practitioner; and
 - f) a statement by the person who is claiming to be a child.

Application of this Part

Age estimation by a probation officer

- (4) The form referred to in subsection (2) shall be available at the child appearance at a preliminary inquiry for purposes of age determination by the inquiry magistrate in accordance with section 41.
- 124) (1) An inquiry magistrate shall, on all the available information and with due regard to the provision of section 123 (3), make a determination, which shall be recorded as the age of the person.
- (2) For the purposes of age determination, an inquiry magistrate may require any documentation, information or statements relevant to age determination from any person, body or institution to be furnished.
- (3) If an inquiry magistrate determines that a person was at the time of the alleged commission of the offence with which the person is being charged, over the age of sixteen years, the inquiring magistrate shall close the preliminary inquiry and direct that the matter be transferred to another Court other than a child justice court.
- (4) The age determined by the inquiry magistrate under this section shall be considered as the age of the person unless contrary information is placed before the inquiry magistrate or Court.
- 125) (1) Where a person appearing in a criminal court other than a child justice court alleges, at any stage before sentence, that he was, at the time of the alleged commission of the offence with which he is being charged, below the age of sixteen years, or where it appears to the court that the person may be below the age of sixteen years, the person shall be referred, in the prescribed manner to a probation officer for estimation of age under section 123 which age estimation shall be submitted to the presiding officer of the Court.
- (2) A presiding officer referred to in subsection (1) shall make a determination of age on the same basis as an inquiry magistrate under section 124.
- (3) If the age of the person referred to in subsection (1) is found to be below the age of sixteen years and the trial has not yet commenced, the presiding officer shall transfer the matter to child justice court.
- (4) If the age of the person referred to in subsection (1) is found to be below the age of sixteen years and the trial has commenced, the proceedings shall continue to be conducted before the presiding officer, but the remainder of the proceedings shall be conducted in accordance with the provisions of this Act.
- (5) The presiding officer concluding a trial in accordance with subsection (4) may, after a finding of responsibility, refer the matter to a child justice court for an order, if to do so is in the best interests of the child.
- (6) Where proceedings have started in accordance with the provisions of this Act in respect of a person who is alleged to have been below the age of sixteen years at the time of the alleged commission of the offence with which such person is being charged, and evidence is produced proving that such person was sixteen years of age or older at such time, the in-

Age determination at a preliminary inquiry

Age assessment and determination by an officer presiding in a criminal court other than a child justice court

quiry magistrate or court shall-

- a) if such person is appearing at a preliminary inquiry, close the inquiry and refer the matter to the prosecutor for arrangements to be made for that person to be tried as an adult;
- b) if a trial has not yet commenced, refer the matter to the prosecutor for arrangements to be made for that person to be tried as an adult;
- c) if a trial has commenced, adjourn the trial and proceed in an open court or transfer the matter to an appropriate court
- d) if the trial has commenced and the offence is otherwise triable by jury, terminate the trial and re-commence the trial as an adult; and
- e) if the person has been convicted, transfer the matter to an appropriate court for that person to be sentenced as an adult.

PART V - LEGAL REPRESENTATION

126) (1) A child has the right to legal representation.

(2) A child, parent, guardian or appropriate adult may appoint a legal representative of their choice to provide legal representation to the child.

(3) A person providing legal representation for a child shall be a person who is entitled to practice as a legal practitioner or any other person lawfully allowed to provide legal representation under written law.

(4) Where a legal representative for a child is appointed in accordance with subsection (2), liability for payment of fees for the legal representation rests on the parents, guardian, or the appropriate adult or where the interests of justice so require, on the State.

(5) A child, parent, guardian, or appropriate adult has the right to give instructions to a legal representative in the language of their choice, and, where necessary, with the assistance of an interpreter.

Access by a child to legal representation

127) (1) Where a child is subject to proceedings under this Act and no legal representative has been appointed, legal representation shall, upon conclusion of a preliminary inquiry, be provided at State expense in accordance with the Legal Aid Act if-

- a) the child is remanded in detention pending a plea and trial in court;
- b) it is likely that an order involving a residential requirement may be imposed;
- c) in the opinion of the inquiry magistrate, it is in the best interest of the child.

and the child, parent, guardian or the appropriate adult cannot afford to engage a legal representative.

(2) Where a child is subjected to care and protection proceedings under this Act, and no legal representative has been appointed, legal representation shall be provided at State expense in accordance with the Legal Aid Act if in the opinion of the court. it is in the best interests of the child, and

Child to be provided with legal representation at State expense

Cap. 4:01

Cap. 4:01

the child, parent, guardian or appropriate adult cannot afford to engage the service' of a legal representative.

(3) Where a child is charged with an offence contemplated in subsection (1) (b), a plea may not be taken until a legal representative has been appointed.

(4) If the parent or guardian of a child who is granted legal representation at State expense under this Act is ineligible for legal representation at State expense due to the fact that the income of the parent or guardian exceeds the means test applied by the Legal Aid Act, the legal aid office may recover from the parent or guardian the whole or part of the costs of the legal representation afforded to the child.

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128) (1) A legal representative representing a child shall-

- a) explain the rights and responsibilities of the child in relation to any proceedings under this Act in a manner appropriate to the age and intellectual development of the child;
- b) allow the child, if capable of doing so, to give the legal representative independent instructions concerning the case;
- c) in matters of criminal proceedings, promote diversion where appropriate, whilst ensuring that the child is not unduly influenced to admit responsibility of the crime;
- d) ensure that all trials are concluded speedily.

Requirements to be complied with by legal representatives

129) (1) Where a child requires legal representation at State expense, the inquiry magistrate or the court, shall immediately request the legal aid office to appoint a legal representative to represent the child.

(2) Where a child is remanded in detention, the legal representative shall, before the next court date, consult with the child at the place where the child is being detained.

Mode of seeking legal representation at State expense

130) (1) A child in need of legal representation in accordance with the provisions of section 127 shall not waive the right to legal representation.

(2) Where a child referred to in section 127 declines to give instructions to the legal representative, the probation officer shall bring this factor to the attention of the inquiry magistrate or the court, and the inquiry magistrate or the court shall question the child to ascertain the reasons for so declining and the inquiry magistrate or the court shall note the reasons on the record of the proceedings.

(3) If, after questioning the child under subsection (2), the inquiry magistrate or the court is of the opinion that the reason for declining relates to the legal representative, the Court or the inquiry magistrate may request the legal aid office to appoint another legal representative.

Child may not waive legal representation

131) (1) If after questioning the child under subsection (2) of section 130 a child continues to decline the legal representation, the inquiry magistrate or the court may request the legal aid office to assist the child at State expense.

Legal assistance

- (2) A person legally assisting the child shall-
 - a) attend all hearings pertaining to the case;
 - b) address the Court on the merits of the case;
 - c) give notice of intention to appeal against a finding of the court or against an order following such finding; and
 - d) have access to the affidavits, statements and any other materials of evidence relating to the case,
- (3) A person assisting a child in accordance with this section may-
 - a) cross-examine any witness; and
 - b) raise objections to the introduction of evidence.

PART VI - CHILD JUSTICE COURTS: ESTABLISHMENT, JURISDICTION, COMPOSITION, PROCEDURE AND POWERS

- | | | |
|------|--|---|
| 132) | There shall be established child justice courts, which shall be subordinate to the High Court and shall exercise jurisdiction conferred on them by this Act or any other written law. | Establishment of child justice courts |
| 133) | <p>(1) A child justice court shall be presided over by a professional magistrate or a magistrate of the first grade.</p> <p>(2) The Chief Justice, having been satisfied as to the competence of the presiding officer, may designate a court of magistrates of any grade to be a child justice court and shall publish a notice of the designation in the Gazette.</p> <p>(3) A presiding magistrate shall, before commencement of proceedings in a child justice court, ensure that a probation officer of sufficient competence relevant to the requirements of this Act is present throughout the proceedings.</p> | Composition of child justice court |
| 134) | <p>(1) Subject to subsection (2), a child justice court shall have jurisdiction over children matters.</p> <p>(2) Where a matter involving a child is otherwise liable to be heard by the High Court, it shall be heard by the High Court, but the High Court shall comply with the requirements of this Act in respect of the child.</p> | Jurisdiction of a child justice court |
| 135) | <p>(1) Where a child is brought before a child justice court, as an accused person or for care and protection proceedings, his parent or guardian may in any case, and, if such parent or guardian can be found and resides within a reasonable distance, shall be required to attend all stages of the proceedings, unless the child justice court is satisfied that-</p> <ul style="list-style-type: none"> a) it is unreasonable or unnecessary to require the attendance of such parent or guardian; or b) it is in the best interests of the child that the parent or guardian should not attend the proceedings. <p>(2) Where it is unreasonable or unnecessary to require the attendance of a</p> | Parent or guardian may be allowed to attend court |

parent or guardian or where the attendance of a parent or guardian will be prejudicial to the fair disposal of the case, taking into account all preliminary findings of the case, the court shall appoint an appropriate adult for purposes of subsection (1) to attend the proceedings in place of the parent or guardian.

- 136) (1) Where a child and an adult are jointly charged of an offence, the child shall be tried separately from the adult, unless there are compelling reasons for joinder of the trials. Separation and joinder of trials involving children and adults
- (2) An application for such joinder shall be directed to the court after notice to the child, parent, guardian or the appropriate adult and the legal representative of the child if available.
- (3) If the court grants an application for joinder of trials, the matter shall be transferred to the court, in which the adult is to appear.
- (4) The Court to which the matter has been transferred shall afford the child concerned all the benefits conferred upon a child by this Act.
- 137) (1) A child shall not be tried by jury except where the child is jointly charged with an adult. Jury trials in children matters
- (2) The court may, on application or on its own motion, order trial by jury if it considers that trial by jury is necessary taking into account the circumstances and facts of the case, and shall institute all measures necessary to protect the best interests of the child.
- (3) Where a child is charged with an offence which is otherwise triable by jury and that he shall be tried without a jury in accordance with subsection (1), the child shall be tried in camera by a High Court Judge sitting without a jury.
- 138) (1) A child justice Court shall sit as often as is necessary for the purpose of exercising any jurisdiction conferred on it by or under this Act or under any other written law. Places of sitting of child justice court and persons who may attend the proceedings
- (2) A child justice court shall, save as otherwise provided in this section, sit either in a different building or room from that in which sittings of courts other than child justice court are held, or on different days from those which sittings of such other courts are held.
- (3) Where a child justice court sits in the same room, and on the same day as other courts, child cases shall take precedence.
- (4) No person shall be present at any sitting of a child justice court, except-
- a) members and officers of the court;
 - b) parties to the case before the Court and their legal representatives and witnesses;
 - c) probation officers, teachers and community leaders that are directly concerned in the matter;
 - d) properly accredited reporters of newspapers and other media agencies

- as authorized by the court with or without conditions; and
- e) such other persons as the court may specially authorize to be present.
- 139) (1) Subject to subsection (2), no media report of any proceedings in a child justice court shall reveal the name, address or school, or include any particulars calculated to lead to the identification of parties to the proceedings, or witnesses and no picture shall be published in any media report as being or including a picture of the child concerned in such proceedings. Restriction on media reports or proceedings in a child justice courts
- (2) A Court may, if satisfied that it is in the interests of justice so to do, by order dispense with the requirements of this section to such extent as may be specified in the order.
- (3) Any person who reports any matter in contravention of this section commits an offence and is liable to-
- a) in the case of a company or organization, a fine of K100.000; and
- b) if such person is a reporter, a fine of K20.000 and imprisonment for six months.
- (4) A court may in addition to ordering the company or organization to pay a fine, also order payment of compensation to the child who has been injured by the report.
- (5) A complaint under this section may be lodged with the police or directly with the court by the injured child, or his parents, guardian, community representatives or any other person on behalf of the child.
- 140) No child shall be imprisoned for any offence. Restrictions on punishment of children
- 141) (1) Where a child is found responsible for offences listed in the Sixth Schedule, the Court shall order him to be detained at a reformatory centre for such period as may be specified in the order. Punishment of certain grave crimes
Sixth Schedule
- (2) Where the court makes an order under subsection (1) the child shall, during that period, notwithstanding any other provisions of this Act, be liable to be detained under such conditions as the Board may generally and specially determine.
- (3) A person detained in pursuance of the directions of the Board under this section shall, while so detained, be deemed to be in legal custody.
- (4) A child detained in accordance with this section may be discharged by the order of the President unconditionally or on such conditions as the President, upon recommendations of the Board, may direct.
- (5) Where the child is discharged with conditions, such order of discharge may, upon recommendations of the Board, be varied or revoked by the President if the child is in breach of the conditions.
- (6) Where an order of discharge has been revoked by the President the person to whom the order related shall proceed to such place as the Board may direct and if he fails to do so, may be apprehended without warrant

and taken to that place.

(7) Where a person detained under this section attains the age of sixteen years while still in detention, he or she shall be separated from the rest of the children or sent to another place or detention other than a prison until the expiry or the remaining period of his or her detention.

- 142) (1) Where a child is charged before a child justice court with the commission of an offence for which a fine may be imposed and compensation, damages and costs or any or all of them may be awarded, and the child justice court is of the opinion that justice would be best served by the imposition of all or any of those penalties, whether with or without any other punishment, the child justice court may order that the fine imposed and compensation, damages or cost awarded be paid by the parent or guardian of the child, unless the child justice court is satisfied that the parent or guardian cannot be found or does not have the means to meet the award, in which case the court may make such alternative order as the court may see fit.

Power to order parent or guardian to pay fine imposed instead of a child

(2) Where a child is charged with an offence, a child justice court may release the child and order his parent or guardian to give security for the good behaviour of the child.

(3) Where a child justice court thinks that a charge against a child is proved, the court may make an order against a parent or guardian for the payment of compensation, damages or costs or may make an order requiring the parent or guardian to give security for the good behaviour of the child without proceeding, to record a finding of guilty against the child.

(4) An order under this section may be made against a parent or guardian who, having been required to attend, has failed to do so, but otherwise, no such order shall be made without giving the parent an opportunity to be heard.

(5) Any sum imposed and ordered to be paid by a parent, or guardian, or on forfeiture of any security given by a parent or guardian under this section, may be recovered from the parent or guardian in like manner as if the order had been made on the conviction of the parent or guardian of the offence with which the child was charged.

- 143) (1) Any court, other than the High Court, before which a child offender is found to be responsible for an offence shall, unless the best interests of the child require otherwise, remit the case to a child justice court.

Duty of other courts to remit the children to a child justice court

(2) The child justice court to which the case of a child is remitted under subsection (1) shall deal with the child as if he had been tried and found to be responsible for the offence by that child justice court.

(3) No appeal shall be made against an order of remission made under this section, but nothing in this subsection shall affect any right or appeal against the verdict or finding on which such an order is founded, and a person aggrieved by the order of the child justice court to which the case is remitted may appeal therefrom to the High Court as if the child concerned had been tried by, or had pleaded guilty before that child justice

court.

(4) A Court making an order remitting a case of the child to a child justice court under this section may-

- a) direct that the child be detained in a reformatory centre or be released on bail until he can be brought before a child justice court;
- b) transmit to the child justice court to which the case has been remitted a certificate setting out the nature or the offence and stating that the case has been remitted for the purpose of being dealt with under this section; or
- c) make an order as the child justice court may make under section 142.

144) (1) Where a child is brought before a child justice court charged with any offence it shall be the duty of the court as soon as possible to explain to the child in simple language suitable to his age and understanding the substance of the alleged offence.

Criminal procedure in a child justice court

(2) After explaining the substance of the alleged offence, the court shall ask the child whether he admits or does not admit the facts constituting the offence.

(3) If the child does not admit the facts constituting the offence the court shall then hear the evidence of witnesses in support thereof and at the close of the evidence in chief or each witness, the witness may be cross-examined by or on behalf of the child.

(4) The court shall, except in any case where the child has legal representation, allow the parents or guardian or, in their absence, any relative or other responsible person to assist the child in conducting his defense.

(5) If in any case where the child is not represented or assisted in his defense as provided in subsection (4), the child, instead of asking questions by way of cross-examination, makes assertions, the court shall then put to the witness such questions as it thinks necessary on behalf of the child and may for this purpose question the child in order to bring out or clear up any point arising out of such questions.

(6) If, when the evidence against the child has been heard, the court is of the opinion that a case is made out against the child sufficiently to require him to make a defence in respect of the offence charged or some other offence which the court is competent to try, they shall consider the charge against the child and decide whether it is sufficient and, if necessary, amend the charge.

(7) If the charge is amended the substance of the offence alleged in it as amended shall then be explained by the court to the child in simple language suitable to his age and understanding, and he shall be asked whether or not he admits the truth of the charge.

(8) If the child does not admit the truth of the charge as amended or if no amendment is made, the court shall explain to the child the substance of the evidence against him and, in particular, any points which are specifi-

cally against him or which require explanation and the court shall thereupon inform the child that he is required to give evidence and the child shall be asked whether he has any witness to examine or other evidence to adduce in his defence.

(9) The child shall give his evidence upon oath or affirmation if he or she is of an age to understand the nature and consequences of the oath or affirmation, and shall answer any question or produce anything lawfully put to or required of him by the court or in cross-examination.

(10) If the child refuses or neglects to-

- a) be sworn or affirmed, as the case may be;
- b) give evidence;
- c) answer any question lawfully put to him by the court or in cross-examination; or
- d) produce any document or thing which he is required to produce,

such refusal or neglect may be taken into account by the court in reaching its decisions.

(11) Where the child elects to call witnesses other than himself evidence shall be taken before that of such other witnesses.

(12) After the child, and his witnesses, if any, have given their evidence and after their examination, cross-examination and re-examination, if any, the court shall give its judgment.

(13) If the child admits the offence or the court is satisfied that it is proved that the child is responsible for the offence, the child and his parent, guardian or appropriate adult, if present, shall then be asked if he, and such parent, guardian, or appropriate adult, desires to say anything in extenuation or mitigation of the penalty or otherwise and before deciding how to deal with the child, the court shall obtain such information as to general conduct, character, home surroundings, school record and medical history, as may enable the court to deal with the case in the best interests of the child, and may put to the child any question arising out of such information which may include any written report of a probation officer or registered medical practitioner or other appropriate person which may be received and considered by the court without being read aloud.

(14) For the purpose of obtaining the information required under subsection (13), or for special medical examination or observation, the court may from time to time remand the child on bail or to a place of detention.

(15) Where the court has received and considered a written report of a probation officer, a registered medical practitioner or other appropriate person-

- a) the child shall be told the substance of any part of the report bearing on his character or conduct which the court considers to be material to the manner in which he should be dealt with:
- b) the parent, guardian, or appropriate adult, if present, shall be told the

- substance of any part of the report which the court considers to be material and which has reference to the character, conduct, home surroundings or health of the child; and
- c) if the child or the parent or guardian having been told the substance of any part of a report, desires to produce evidence with reference thereto, the court, if it thinks the evidence is material, shall adjourn the proceedings for the production of further evidence, and shall, if necessary, require the attendance at the adjourned hearing of the person who made the report.
- 145) The proceedings of a child justice court shall be informal and in particular, the presiding officer shall ensure that-
- a) technical language is not used during hearing;
- b) no person puts on official uniform or professional robes or dress save only if it is strictly required to do so for the child to make an identification or for purposes of evidence as the court may authorize;
- c) there are regular breaks with such necessary provisions for the child as the Minister may prescribe by regulations; and
- d) children with disabilities are accorded assistance to meet their special needs where necessary.
- 146) (1) Where a child admits the facts constituting the offence or where a child justice court is satisfied that an offence has been proved, the Court shall, in addition to any other powers exercisable by virtue of this Act or any other written law, in so far as such law is consistent with this Act, have power-
- a) to discharge the child unconditionally;
- b) to discharge the child upon his entering into a bond to be of good behaviour and to comply with such conditions as the court may direct to be inserted in the bond;
- c) to commit the child to the care of a relative or other fit person willing to undertake the care of the child;
- d) to order the parent or guardian to execute a bond to exercise proper care and guardianship;
- e) to order the child to pay a fine, compensation, damages or costs;
- f) without making any other order, or in addition to an order under paragraphs (b), (c), (d) or (e), to make a probation order placing the child under the supervision of a probation officer or some person appointed for the purpose by the court, for a period of not less than one year and not more than three years from the date of the order as may be specified in the order, and to require the probation officer or the appointed person as the case may be to submit regular reports to the court on the development of the behaviour of the child;
- g) to commit the child to the High Court for an order where appropriate;
- h) to make a reformatory centre order; and

Proceedings of a child justice court to be informal

Power of child justice court on proof of offence

- i) to commit the child to a diversion programme.
- (2) A court shall not make a reformatory centre order in relation to a child under the age of fourteen years, unless-
- a) there is no fit person willing to undertake the care of the child; or
 - b) the court is satisfied that the child cannot suitably be dealt with otherwise.
- (3) In arriving at its decision under this section, the court shall have regard to section 88 of this Act.
- 147) (1) A reformatory centre order or any other order of detention relating to a child shall be sufficient authority for the detention and rehabilitation of the child in a reformatory centre in accordance with this Act. Reformatory centre orders and other orders for detention
- (2) The Board may at any time during the authorized period of detention exercise any of its powers in relation to the child under section 154.
- (3) A reformatory centre order shall be in the form as set out in the Seventh Schedule *Seventh Schedule*
- (4) The Chief Justice may by notice in the Gazette amend the Seventh Schedule. *Seventh Schedule*
- (5) A reformatory centre order or a warrant in pursuance of which a child is detained under this Act shall be delivered with the child to the person in charge of a reformatory centre and a copy of the order shall be delivered to the Registrar of the High Court for transmission to the Chairman of the Board.
- (6) The manager of a reformatory centre shall assess the progress of each child under his control and shall submit the monthly assessment reports for each child to the Board for purposes of section 153.
- 148) (1) A child in the custody and care of any person pursuant to an order of a court under this Act, while being conveyed between the Court and a reformatory centre or safety home on remand or otherwise, or while being transferred by direction of the Board shall be deemed to be in lawful custody and if such child escapes he may be apprehended without warrant and brought back to the appropriate place but the escape shall not constitute a criminal offence. Escape from custody or care and breach of court condition
- (2) Where a court has committed a child to the care of any person under section 146 (1) (c) and it is reported to the court that the child has escaped from the care of the person or that the person is unable or no longer willing to continue to undertake the care of the child, the court may, upon the child being brought before it, make such other order in replacement of its previous order as it could have made at the time of its previous order.
- (3) Where a child has Committed a breach of any condition upon which the child has been released by order of court or by the Board, the Chairman of the Board may direct any person, without warrant, to apprehend that child and to convey him to a reformatory centre for detention, and the provision of subsection (1) shall apply.

149) (1) Any child, his/her parent, guardian or appropriate adult dissatisfied with any judgment or order of a child justice court, may appeal to the High Court against such judgment or order in accordance with the provisions of any written law regulating appeals to the High Court from a subordinate court.

Appeal and review

(2) Where a reformatory centre order or any other order for detention has been made by the child justice court under this Act a copy of the order together with the proceedings, including the information obtained under section 144 (13) and the reasons of the Court for making the order, shall be sent within seven days to the High Court which may confirm or set the order aside and substitute any other order which the child justice Court might have made.

PART VII – CHILD CARE REVIEW BOARD

150) (1) There is hereby established a Child Case Review Board (in this Act otherwise referred to as the “Board”).

Establishment of Child Case Review Board

(2) The Board shall consist of members appointed by the Minister as follows-

- a) a chairperson of the Board, who shall be a judge of the High Court, nominated by the Chief Justice;
- b) a deputy chairperson who shall be a Resident Magistrate appointed by the Chief Justice;
- c) other members nominated by the relevant authority or organization each to represent-
 - i) the Secretary for the Ministry responsible for health;
 - ii) the Secretary for the Ministry responsible for education;
 - iii) the Secretary for the Ministry responsible for labour;
 - iv) the Secretary for the Ministry responsible for children affairs;
 - v) the Secretary for the Ministry responsible for justice;
 - vi) the Secretary for the Ministry responsible for youth;
 - vii) the Secretary for the Ministry responsible for home affairs;
 - viii) the Malawi Human Rights Commission;
 - ix) a non-governmental organization that is directly concerned with children matters;
 - x) the Malawi Police Service;
 - xi) reformatory centres; and
 - xii) religious organization.

(2) The nominating authority of a member under subsection 1 (c) may, subject to the approval of the Minister, designate any duly qualified officer or other person to act for that member during the member's temporary

inability to act by reason of sickness, absence or other causes.

(3) Members of the Board shall not, by reason of their appointment, be deemed to be officers in the public service.

(4) Members of the Board appointed under this section shall be paid such allowances for refundable costs and sundries out of the funds of the Board as the Minister may prescribe.

151) (1) Members of the Board shall hold office for a period of three years subject to re-appointment. Tenure of office of members of the Board

(2) A person appointed to fill a vacancy on the Board shall serve for the remainder of the term and shall be eligible for re-appointment.

(3) The Chairperson and Deputy Chairperson of the Board may, resign their appointment and the other members of the Board or their alternates may resign their appointments by giving notice in writing to the Chairperson, but no such resignation shall take effect until seven days after the receipt of the notice by the Chief Justice or the Chairperson, as the case may be.

152) (1) The Chairperson of the Board shall preside at meetings of the Board and in his absence, the deputy Chairperson shall preside. Proceedings of the Board

(2) In the absence of both the Chairperson and the Deputy Chairperson of the Board, and if the issue to be disposed of is urgent and non-judicial in nature, members of the Board present and forming a quorum shall elect one of their number to preside at that meeting.

(3) The quorum of the Board shall be formed by a simple majority of the members of the Board.

(4) Decisions of the Board shall be in accordance with the vote of the majority of members present and voting, but in the event of an equality of votes, the Chairperson or the person performing the functions of the Chairperson at the meeting concerned, shall, have a casting vote in addition to his deliberative vote.

(5) Meetings of the Board shall be held as often and at such times and places as the Chairperson shall determine but not less than four times in a calendar year.

(6) The Board shall determine its own procedure subject to the provisions of this Act.

153) The functions of the Board shall be- Functions of the Board

- a) to consult with and advise on the administrators of reformatory centres, safety homes and foster homes;
- b) to undertake visits and to monitor reformatory centres, safety homes and foster homes to ensure compliance with this Act;
- c) to keep a register of detained children;
- d) to review cases of child offenders and matters of children kept for the

- purposes of care and protection;
- e) to facilitate the designing and implementation of rehabilitation programmes and curriculum for the proper reintegration of children into society;
 - f) to coordinate with civil society organizations and other organizations dealing with children;
 - g) to facilitate relations between communities and places of detention;
 - h) to facilitate and supervise recruitment of staff in reformatory centres, safety homes and foster homes;
 - i) to carry out any other duties imposed upon it under this Act; and
 - j) to do all the functions that are necessary in order to promote the development of children.
- 154) (1) The Board shall have the power-
- Powers of the Board
- a) to specify the reformatory centre to which any child in respect of whom a reformatory centre order has been made is to be sent;
 - b) to specify the foster home to which any child in respect of whom a foster home placement order has been made is to be sent;
 - c) at any time to cancel a reformatory centre order or safety home order and order the absolute or conditional discharge of any child from any reformatory centre or safety home or any other place of detention;
 - d) to order any child to be transferred from one reformatory centre or safety home to another reformatory centre or safety home or to any other place of detention;
 - e) to order any child to be released from any reformatory centre or safety home on condition that the child shall live under the charge of, and be supervised by, any fit person including a probation officer named in the order of release willing to receive, take charge of, supervise, educate and keep the child employed in some trade, occupation or calling as the Board may recommend from time to time;
 - f) to attach such conditions as it thinks fit to any order discharging a child from a reformatory centre and to cancel the order of discharge if any such condition is not observed.
- (2) Where the Board is satisfied, on the representations of the manager of a reformatory centre or safety home, that a child ordered to be detained in such reformatory centre or safety home is of unruly character that he is not a fit person to be detained, or is of depraved character that he is not a fit person to be so detained, the Board may upon assessing the child, order the child to be transferred to and be detained in another reformatory centre or safety home, which the Board considers more suitable for the child.
- (3) Where a child having been transferred to another reformatory centre, safety home or any place of detention is again brought before the Board on the representations of the manager of the reformatory centre or safety

home as being of unruly or depraved character, the Board shall make any necessary order as it thinks fit and proper.

(4) Any person who considers himself aggrieved by any order made by the Board under this section may appeal to the High Court.

(5) Any person, not being a child, who willfully disobeys, obstructs, or fails to comply with any order made by the Board under this section commits an offence and shall be liable to a fine of K20.000.

- 155) (1) An officer shall be appointed in the public service to act as Secretary to the Board. Secretariat of the Board
- (2) The Secretary shall-
- a) maintain records for the Board;
 - b) perform administrative duties;
 - c) prepare budgets;
 - d) act as liaison officer for the Board; and
 - e) perform such other duties as the Board may assign to him, and shall be subject to the general and special direction of the Chairperson and the Board.
- (3) In addition to the Secretary to the Board, there may be appointed in the public service other officers in the service of the Board subordinate to the Secretary.

- 156) (1) The funds of the Board shall consist of such sums as Parliament shall appropriate for the purposes of the duties and the Board. Funding for the Board
- (2) In addition to any sums appropriated under subsection (1) the Board may receive donations of funds, materials and other forms of assistance from any person, body or organization.

PART VIII-REFORMATORY CENTRE AND SAFETY HOMES

- 157) (1) The Minister shall establish places or institutions as public reformatory centres or public safety homes for the purposes of this Act. Public reformatory centres and public safety homes
- (2) All institutions which at commencement of this Act are operating as public reformatory centres shall be deemed to have been established under this Act.
- (3) All public reformatory centres and safety homes shall be managed by a person appointed by the Minister.
- (4) The establishment of public reformatory centres and public safety homes under this section shall be published in the Gazette.
- (5) The publication shall state whether the public reformatory centre or public safety home is for female or male children or for both and shall specify the number of children to be detained in that centre.
- 158) (1) The manager or proprietor of a home or institution may apply to the Minister to appoint the home or the institution to be a private reformatory Minister may appoint private reformatory cen-

- centre or private safety home.
- (2) The Minister, upon being satisfied that the application meets the necessary requirements in accordance with this Act, may designate the institution as a private reformatory centre or a private safety home and shall issue a certificate to that effect to the manager or proprietor of the institution.
- (3) The issue of the certificate by the Minister shall be notified in the Gazette.
- (4) The certificate issued by the Minister shall state the number of children authorized to be kept at the centre or home at any one time and shall state whether the centre or home is for male children or female children or for both.
- 159) (1) A reformatory centre and a safety home shall be regulated and managed in accordance with the Reformatory Centre and Safety Home (Management) Rules as set out in the Eighth Schedule
- (2) The Minister may, by order published in the Gazette, amend the Eighth Schedule.
- 160) (1) The manager of a reformatory centre or a safety home shall send reports to the Board in the prescribed form containing such particulars as are required by the Reformatory Centre and Safety Home (Management) Rules at monthly intervals and such other intervals as the Board may direct.
- (2) The Manager of a reformatory centre or a safety home shall at all reasonable times allow the centre or home to be inspected by any person or persons appointed by the Board in accordance with this Act.
- 161) (1) The Board may from time to time appoint a team of qualified persons for the purposes of-
- a) inspecting reformatory centres and safety homes;
 - b) reporting to the Board on the management and state of condition, appearance and training of children detained at a centre or a home.
- (2) The persons so appointed shall have authority to enter and inspect the premises and the detained children and to make all reasonable inquiries about the management of the centre or home and to promptly report the findings to the Board.
- (3) If, in the opinion of the Board, the centre or home requires to be closed, it shall send the inspectors report together with its recommendation to the Minister.
- (4) Where inspectors consider it necessary for the welfare and safety of the children held at a reformatory centre or safety home, they may direct immediate and temporary closure of the centre or home and shall include such decision in the report send to the Board and the Board shall forward the report and the recommendations to the Minister for final decision.

tres and private
safety homes

Reformatory
Centre and Safety
Home (Management) Rules

Eighth Schedule

Eighth Schedule

Manager shall
send monthly
reports to the
Board and allow
inspection

Inspection of
reformatory centres and safety
homes

- (5) The manager of a reformatory centre or a safety home may make submissions to the Minister in writing showing cause why the centre or home should not be permanently closed pending the Minister's final determination.
- 162) (1) In all other circumstances not requiring immediate and temporary closure of a reformatory centre or safety home, the Minister, upon considering the report of inspectors and the Board's recommendations, may direct the closure of the centre or home by notice in writing.
- (2) The Minister shall not close a reformatory centre or a safety home without giving the manager of the centre or the home an opportunity to be heard.
- (3) Notice of the closure of a reformatory centre or a safety home shall be given to the manager of the centre or home and the centre or home shall cease to be a reformatory centre or a safety home from the time specified in the notice.
- (4) The Minister shall publish the notice of the closure of a reformatory centre or safety home in the Gazette.
- 163) The manager of a reformatory centre or a safety home may apply to the Minister to review a decision to close the centre or home and the Minister may, upon considering the application, re-issue the certificate.
- 164) (1) The manager or proprietor of a private reformatory centre or a private safety home intending to close the centre or the home, may, upon giving notice of the intention to the Minister of not less than one month and not more than six months in writing, apply for the closure of the centre or the home.
- (2) The executors or administrators of a deceased proprietor intending to close a private reformatory centre or a private safety home may, upon giving one month's notice in writing of their intention, apply for the closure of the centre or home.
- (3) At the expiry of the period of the notice given under subsection (1) or (2), unless the notice has been withdrawn, the Minister may proceed with the closure and notification of such closure shall be published in the Gazette.
- (4) A notice of the intention to close a reformatory centre or a safety home given under subsection (1) or (2) may be withdrawn before the close of the centre or home.
- (5) Notwithstanding subsection (4), the Minister may, proceed with the closure if the condition of the centre or home requires that the centre or home be closed, but the Minister shall not so proceed unless he has been given the proprietor, executor, manager, or the administrator an opportunity to be heard.
- 165) The manager of a private reformatory centre or a private safety home

Powers of Minister to direct closure of reformatory centres or safety homes

Application to review Minister's decision on closure of a reformatory centre or safety home

Manager, proprietor, his executor or administrator, may apply for closure

Duty to receive

- shall, if there is a vacancy in the number of children authorized to be detained at the centre or home, be liable to receive any child sent to the centre or home under this Act, and shall undertake to educate, clothe, lodge and feed the child during the whole period for which the child is liable to be detained at the centre or home.
- 166) If a reformatory centre or a safety home has been closed under the provisions of this Act, no child shall be received into such centre or home under any of the provisions of this Act after the date of the receipt by the manager of the centre or home of the notice of the closure or after the date specified in the notice of the closure.
- 167) (1) When the closure of a private reformatory centre or private safety home takes effect, the persons resident shall be, by order of the Board and upon consultation with the Minister, either discharged or transferred to some other reformatory centre or safety home as the case may be.
- (2) Where a reformatory centre or a safety home is temporarily closed by inspectors in accordance with section 161 (4), the Board shall make all necessary arrangements to transfer the children resident at the centre or home to an alternative suitable place.
- (3) The period of stay for which any child was sent to a reformatory centre or a safety home shall not be increased by the transfer of such child to another place.
- 168) The manager of a reformatory centre or a safety home shall review all cases of children detained for twelve months, and may, after such review, recommend to the Board the conditional discharge of such children.
- 169) A reformatory centre or a safety home shall be a lawful place of detention for children in respect of whom a lawful order has been made or who may lawfully be transferred thereto.
- 170) (1) Where a child who is detained in a reformatory centre or a safety home under the provision of this Act is seriously ill, and there is no suitable provision for the care of such illness, the manager or the person having control of the place where such child is detained may, on the certificate of a medical officer, make an order for the removal of the child to a hospital.
- (2) So long as a child who has been removed to a hospital under the provisions of subsection (1) shall remain in hospital, the medical officer in charge of the hospital shall, at the end of every month, transmit to the manager or the person having control of the place where such child was detained a certificate signed by the medical officer that it is in the medical officer's opinion necessary that the child should remain in the hospital.
- (3) The manager or the person having control of the reformatory centre or safety home concerned shall, if the illness is serious or recurrent, inform the parents or the guardian about such illness.
- (4) In this section, "hospital" means a government hospital and any registered health centre, institution or facility.
- 171) (1) If, in the opinion of the medical officer, it is no longer necessary that

children

Effect of closure notice

Discharge or transfer of children

Review of cases of detained children

Reformatory centre, safety homed lawful places of detention

Illness of children detained

Return after

- the child should remain in the hospital, the officer shall issue a certificate to that effect to the manager or person having control of the place where the child was detained. medical treatment
- (2) The manager or the person having control of the place where the child was detained may, upon seeking the advice of the medical officer, recommend to the Board for the release of the child from the place of detention.
- 172) Every reasonable precaution shall be taken by medical officers or other officers of a hospital to prevent the escape of a child who may at any time be under medical care at the hospital. Duty to prevent escape
- 173) (1) Any child who, having been committed to the care or custody of a reformatory centre or a safety home, willfully neglects or refuses to conform to the rules of discipline of the centre or home shall be disciplined in accordance with the disciplinary rules of the centre or home made under section 176. Breaches of rules and discipline
- (2) Where a child who has been committed to a reformatory centre or a safety home proves, in the opinion of the manager of such place, to be of so unruly or depraved a character as to render his retention in the reformatory centre or the safety home undesirable the manager may make a report of the circumstances of the case in writing to the Board.
- 174) Any person who Penalties for assisting or inducing escape and for harbouring or concealing escaped children
- a) knowingly assists directly or indirectly, or induces any child legally detained in a reformatory centre or a safety home or detained in a hospital to escape from such place;
- b) knowing that a child ordered to be detained or committed at a reformatory centre, safety home or hospital has escaped from the centre or home, or hospital, harbours or conceals, or assists in harbouring or concealing the child, or causes or induces the child not to return to centre, home, or hospital, commits an offence and shall be liable to imprisonment for six months and a fine of K50,000.
- 175) The production of the warrant or any other document, in pursuance of which a child is sent to a reformatory centre, safety home or hospital shall in all proceedings relating to the child be sufficient evidence of the identity and of the lawful detention or disposal of the child named in the warrant or document. Presumption of evidence of identity
- 176) (1) The manager of a reformatory centre or a safety home may make rules not repugnant to, or inconsistent with, this Act for the maintenance of discipline at the centre or home. Disciplinary rules
- (2) Disciplinary rules under this section shall not be enforced until they have been approved by the Minister.
- (3) Rules approved by the Minister shall not be altered without the like approval.
- (4) A copy of the disciplinary rules of a reformatory centre or safety home

purporting to be signed by the manager of the centre or home shall be prima facie evidence of such rules for purposes of any legal proceedings.

PART IX - GENERAL

- 177) (1) When a reformatory centre order, safety home order, a foster home placement order or an order committing a child to the care of a fit person has been made by a child justice court (hereinafter in this section referred to as a "committal order") the court may, at the same time or subsequently, make a contribution order requiring a parent or guardian or other person having custody of the child to contribute a weekly, monthly or any other periodic sum as may be specified in the order or to make other necessary contributions as the court may consider proper in respect of his maintenance.
- (2) A contribution order may be made against the parent or guardian or a person having custody of the child, who having been required to attend before the child justice court, has failed to do so; but no such order shall be made without giving the person to make the contribution an opportunity to be heard,
- (3) A contribution order shall remain in force as long as the relevant committal order is in force.
- (4) Subject to subsections (4) and (5), no contribution shall be payable under a contribution order in respect of any period during which the person to be maintained is on conditional discharge or release or under the supervision of a probation officer.
- (5) A contribution order may be varied, revoked or suspended by the court which made it but shall not be varied as to increase any contribution payable under the order without giving the person making the contribution an opportunity to be heard.
- (6) If a person willfully neglects to comply with a contribution order, the court which made the order may, for every breach of the order, by warrant, direct the amount due to be levied in accordance with the law for levying fines imposed by courts or may sentence the person to imprisonment for fourteen days for each month's contribution remaining unpaid.
- 178) Funds for public reformatory centres, public safety homes and public foster homes shall consist of-
- a) such funds as Parliament may appropriate;
 - b) contributions ordered by the court under section 177; and
 - c) any donations of funds, materials and other gifts from any person.
- 179) (1) A person to whose care a child is committed under this Act shall, whilst the order is in force, have the like control over the child as if he were the parent of the child responsible for the maintenance of the child and the child shall continue to be in the care of such person notwithstanding any claim by the parent of the child or by any person unless the court orders otherwise.

Contribution order

Funds for public reformatories centres, public safety homes and public foster homes

Duties and powers of a person to whom a child is committed

(2) A person to whose care a child is committed under this Act shall report to the court-

- a) quarterly, on the condition, education and health of the child: and
- b) immediately, if the child dies or escapes from that person's control.

(3) Where a person fails to make a report under this section, the Court may exercise any of its powers under section 146.

(4) A person to whose care a child is committed shall at all reasonable times allow a Social Welfare Officer to visit the place where the child is living and shall answer all reasonable enquiries which may be made by such Social Welfare Officer.

180) (1) Where a court has made a probation order under section 146 (1) (f) the parents or guardians of the child shall continue to be responsible for the care and maintenance of the child but shall allow the probation officer or other persons appointed for the purpose by the court (hereinafter referred to as the "supervisor") to have access at any time to the place where the child is living.

Duties arising from a probation order

(2) The parents of the child shall give all such information relating to the condition, education and health of the child as the supervisor may require and shall, in the best interests of the child, consider any advice relating to the upkeep and education of the child which may be given by the supervisor.

(3) If at any time the supervisor reports to the court that the child in respect of whom the probation order has been made should be removed from the custody of the parents or guardian, the court shall consider such report as though there were proceedings pending under section 144 and may make any order in place of the probation order which it might have made under section 146.

181) Any person, not being a child, who-

General offences

- a) refuses to answer, to the best of his knowledge and belief, any question which he is legally bound to answer and which is asked of him by any officer appointed by or under this Act;
- b) willfully signs or delivers any false or incorrect notification, report or statement;
- c) refuses to allow an officer appointed or authorized under this Act such entry or access to any house, building, land, enclosure, vessel or other place as he is required by this Act to allow; or
- d) contravenes or fails to comply with any order, summons or warrant lawfully made or issued under this Act.

commits an offence and shall be liable to imprisonment to six months and to a fine of K50.000.

182) (1) Subject to subsection (2), no action and no order made in the purported exercise of any power conferred by this Act shall be deemed illegal by reason only that it afterwards appears or is discovered that a mistake has

Mistake as to age

been made regarding the age of a person.

(2) Where a mistake is made as to the age of a child, an order of the court made against the child on the basis of the mistake as to the age shall be invalid to the extent of the adverse effect as against the child, and the court which made the order or any other court of coordinate jurisdiction shall have power to make a declaration to that effect.

- | | | |
|------|---|---|
| 183) | A court may, on application or on its own motion, extend the application of this Act to persons that are above sixteen years of age but below twenty-one years of age. | Extension of application of the Act |
| 184) | The Minister may, on the recommendation of the Board, make regulations for carrying this Act into effect. | Regulations and rules |
| 185) | The Chief Justice may make rules regulating the procedure and practice in a child justice court. | Court rules |
| 186) | (1) Subject to subsection (2), the Affiliation Act and the Children and Young Persons Act are hereby repealed. | Repeal and saving |
| | (2) Any subsidiary legislation and any order made under the Affiliation Act and the Children and Young Persons Act repealed by subsection (1) and in force immediately before the commencement of this Act- | Cap. 26:02
Cap 26:03
Cap. 26:02
Cap. 26:03 |
| | a) shall remain in force and effect, unless in conflict with this Act, shall be deemed to be subsidiary legislation or an order made under this Act; and | |
| | b) may be replaced by subsidiary legislation or an order made under this Act. | |

PART X- TRANSITIONAL PROVISIONS

- | | | |
|------|---|----------------------------------|
| 187) | (1) The Minister shall, at the commencement of this Act, by writing under his hand direct- | Transfer of children |
| | a) the transfer to a safety home in accordance with the provisions of this Act, any person in custody who is a child and is alleged to have committed an offence in respect of which proceedings have not been commenced; | |
| | b) the transfer to a reformatory centre in accordance with the provisions of this Act, any person who is a child and is serving a custodial sentence; | |
| | c) the transfer to a foster home or, where necessary, to a safety home in accordance with the provisions of this Act, any child who is in a reformatory centre for the purposes of care and protection. | |
| 188) | (1) A police officer in charge of a police station or a person in charge of a prison shall, at the commencement of this Act- | Remittance of a list of children |
| | a) remit to the Board a list of all persons in custody who are children within the meaning of this Act; and | |
| | b) remit to the Board a list of all persons serving sentences in custody | |

who were children at the time the offences were committed.

(2) A person in charge of a reformatory centre shall, at the commencement of this Act remit to the Board a list of children being kept at the centre for the purposes of care and protection.

- 189) (1) Where, at the commencement of this Act, proceedings have been commenced in respect of a person who is a child or a young person within the meaning of the Children and Young Persons Act and the Affiliation Act (now repealed) the proceedings and all related matters shall be dealt with as if they had been commenced under this Act and any court dealing with the matter shall continue as if it has jurisdiction under this Act.

Proceedings under related Acts

Cap. 26:03

Cap. 26:02

SCHEDULES

FIRST SCHEDULE

(s. 38)

PRESCRIBED FORM OF ACCOUNT OF A CHILD'S ESTATE

I, of

do solemnly and sincerely declare that the estate of name of child/children is as follows-

Description of property:

Income (monthly, quarterly, yearly):

Bank Details (account number, balance, etc.):

AND I MAKE this solemn declaration, conscientiously believing the same to be true [and by virtue of the Oaths, Affirmations and Declarations Act].

Declared atthis..... day of..... 20.....

Before me

.....

[Commissioner for Oaths]

SECOND SCHEDULE

(s. 52)

FORM I

FOSTER-CARE PLACEMENTS
APPLICATION TO FOSTER A CHILD

Name of Applicant:

Married/Single: Age:

Address:

Telephone Number:.....

Number of Children: Age:

Employment of Applicant:

Employment of Husband:

Employment of Wife:

Other Sources of Income (e.g. Farm):

Have you ever fostered a child/children before? (If so give particulars):

Reasons for Foster:

Are you willing to undertake short-term fostering?

Names of Referees and their Addresses (one shall be your local or Village Chief):

1.....

.....

.....

.....

Age Range:

Sex of child you wish to foster:

Applicant's Signature:

Date:

FOSTER-CARE PLACEMENTS

(s. 58)

FORM 2

FORM OF UNDERTAKING

(To be filled in Triplicate)

I/We (names of foster parents):

Address of Foster Parents:

Who received (name of child):

Into my/our home on (date):

From (name of District Social Welfare Office):

Undertake that-

1. I/we will care for (name of child):

as though he/she were my/our own child.

2. I/we will bring him/her up in accordance with the

.....

3. I/we will look after his/her health and allow him/her to be medically examined as required by, the District Social Welfare Office.

4. I/we will allow an Officer of the District Social Welfare Office or representative of the Ministry to visit my/our home, and to see the child at any time.

5. I/we will inform the District Social Welfare Office immediately if the child is seriously ill, or is missing, or is involved in an accident, or is in any kind of trouble.

6. I/we will inform the district Social Welfare Office immediately if I/we plan to change residence and address.

7. I/we understand that an Officer of the District Social Welfare Office has the right to remove the child from my/our home in certain circumstances.

Signed:

(Foster Father)

Signed:

(Foster Mother)

CERTIFICATE

I

(Title):

Certify that I have explained the foregoing undertaking in the

..... language to

..... and

foster parent(s).

Signed:

(District Social Welfare Officer)

Date:

Signed:

(Witness)

Date:

.....
(Address of District Social Welfare Officer)

.....
(Address of Witness)

FOSTER-CARE PLACEMENTS

(ss. 55 and 67)

FORM 3

PROSPECTIVE FOSTER PARENT RECORD

Name of Prospective Foster Parent(s):

Date of Birth:

Age:

District of Origin:

Religion:

Occupation:

Marital Status of prospective Foster Parent(s):

Is the relationship monogamous or polygamous?.....

Home Address-

T.A.:

Village:

District:

Details of other people living in the home:

Name	Relationship to Prospective Foster Parent(s)	Age	School/Class Occupation
.....
.....
.....
.....
.....
.....

Is there or has there been any serious illness/infection in the family? (I f any, give details):

.....
.....
.....
.....
.....

State the income and wealth of the prospective foster parents. Give details of business and land owned

by the family/person.
.....

Description of the home:
.....

Number of Rooms:..... Type of Toilet:
Type of Water Supply:

Will the family/person need material support in order to start fostering? If the answer is "yes" state what will be needed:

.....
.....
.....
.....

Why does this family/person wish to foster children?

.....
.....
.....
.....

Do they understand the temporary nature of fostering?

Has the person/any member of the family had a serious conviction (if YES, give details and dates and state whether in your opinion it is of such seriousness as to prevent the family/person from taking on a foster placement?

.....
.....
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.....

Assessment of the suitability of that family/person to foster children.

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.....

.....
.....
Recommendation:

.....
.....
.....
.....
.....
What type of foster child would best benefit from this family/ person? (baby, child, male, female, etc.)

Details of Foster Children already placed with foster parents:

<i>Name of Foster</i>	<i>Sex</i>	<i>Date of placement</i>	<i>Age at date of placement</i>	<i>Date of termination</i>	<i>Why terminated</i>
.....
.....
.....
.....
.....

Details of parents and siblings of foster children if known:

<i>Name of Foster Child</i>	<i>Name of Parents</i>	<i>Names of brothers/ sisters of foster child</i>	<i>Sex</i>	<i>Age</i>	<i>Religion</i>	<i>Address</i>
.....
.....
.....
.....
.....

Name of Supervising Officer:

Address:

Signature:

Date:

FOSTER-CARE PLACEMENTS

(s.67)

FORM 4

FOSTER CHILD CASE RECORD

Name of child (surname first):

Date of Birth: Age:

District of Origin:

Sex: Religion:

Name of Foster Parents:

Foster Parent's Home Address: Change of Address:

Village:

T.A.:

District:

Natural Father's Name: Alive/Dead/Unknown

Natural Mother's Name: Alive/Dead/Unknown

*Natural Father or
Guardians Address*

*Natural Mother or
Guardians Address*

Village:

T.A.:

District:

Details of Foster Child brothers, sisters and relatives:

Name	Address	Alive/Dead
.....
.....
.....
.....
.....

Where was the child living immediately prior to this foster placement? (Please give names and addresses of carers or institution):

.....
.....
.....
.....

THIRD SCHEDULE

(s. 88)

GUIDING PRINCIPLES IN MATTERS CONCERNING CHILDREN

- | | |
|--|---------------------------|
| <p>1) Whenever the state, a court, a local authority or any person determines any question with respect to-</p> <p>(a) the upbringing of a child or;</p> <p>(b) the administration of a child's property or the application of any income arising from it.</p> <p>the welfare of the child shall be of the paramount consideration.</p> | Welfare principle |
| <p>2) In all matters relating to a child, whether before a court of law or before any other person, regard shall be to the general principle that delay in determining the questions is likely to be prejudicial to the welfare of the child.</p> | Time being of the essence |
| <p>3) In determining any question relating to circumstances set in paragraphs (a) and (h) of paragraph (I), the court or any other persons shall have regard to the best interest of the child, including in particular to-</p> <p>a) the ascertainable wishes and feelings of the child concerned considered in the light of his age and understanding;</p> <p>b) the physical, emotional and educational needs of the child;</p> <p>c) the likely effects of any changes in the child's circumstances;</p> <p>d) the age, sex and background of the child and any other circumstances relevant in the matter;</p> <p>e) any harm that the child has suffered or is at the risk of suffering;</p> <p>f) where relevant, the capacity of the parents, guardians or other people involved in the care of the child in meeting needs of the child.</p> | Criteria for decisions |
| <p>4) A child shall have the rights-</p> <p>(a) to leisure which is not morally harmful and the right to participate in sports and positive cultural and artistic activities;</p> <p>(b) to a just call on any social amenities or other resources available in any situation of armed conflict or natural or man-made disasters;</p> <p>(c) to exercise, in addition to all rights states this Schedule and this Act, all the rights set out in the United Nations Convention on the Rights for the Child and the Organization of African Union Charter on the Rights and Welfare of the African Child with appropriate modifications to suit the circumstances in Malawi that are not specifically mentioned in this Act.</p> | Rights of the child |

FOURTH SCHEDULE

(s. 112)

Children charged with the following offences shall not be considered for diversion:

OFFENCE

- 1) Rape
- 2) Attempted rape
- 3) Abduction
- 4) Defilement of a girl and attempted defilement
- 5) Defilement of an idiot or imbecile
- 6) Manslaughter
- 7) Murder
- 8) Attempted murder
- 9) Infanticide
- 10) Killing an unborn child
- 11) Disabling in order to commit a felony or misdemeanour
- 12) Stupefying by overpowering drug or thing with intent to commit a felony or misdemeanour
- 13) Robbery with violence
- 14) Attempted robbery with violence
- 15) House breaking and burglary
- 16) Arson
- 17) Offences against aircraft
- 18) Offences against motor vehicles, trains, etc.
- 19) Conspiracy to murder
- 20) Aiding suicide
- 21) Acts intended to cause grievous harm or prevent arrest
- 22) Preventing escape from a wreck
- 23) Maliciously administering poison with intent to harm
- 24) Intentionally endangering safety of persons travelling by railway
- 25) Accessory after the fact to murder.

FIFTH SCHEDULE

(ss. 110, 113, 117
and 119)

DIVERSION OPTIONS

CATEGORY A

Category A diversion options are-

- (1) An oral or written apology to the victim or victims of the offence or to any other specified person or institution;
- (2) A formal caution with or without conditions;
- (3) Placement under a supervision and guidance order placing the child under the supervision and guidance of a mentor or peer role model for a period not exceeding three months in order to monitor and guide the child's behaviour;
- (4) Placement under a reporting order requiring a child to report to a specified person at a time or at times specified in such order so as to enable such person to monitor the child's behaviour for a period not exceeding three months;
- (5) The issue of compulsory school attendance order for a period not exceeding three months requiring the child to attend school everyday for a specified period of time, which attendance shall be monitored by a specified person;
- (6) The issue of a family time order requiring the child to spend a number of hours with his family for a period not exceeding three months;
- (7) The issue of a positive peer association order requiring a child to associate with persons who can contribute to the child's positive behaviour for a period not exceeding three months;
- (8) The issue of a good behaviour order requiring a child to abide by an agreement made between the child and his family to comply with certain standards of behavior;
- (9) The issue of an order prohibiting the child from visiting, frequenting or appearing at a specified place;
- (10) Referral to counselling or therapy for a period not exceeding three months;
- (11) Compulsory attendance at a specified centre or place for a specified vocational or educational purpose for a period not exceeding five hours each week, for a maximum of three months;
- (12) Symbolic restitution of an object owned, made or bought by a child to a specified person, persons, group or institution;
- (13) Restitution of a specified object to a specified victim or victims of the alleged offence where the object concerned can be returned or restored; and

- (14) Any order removing the child from undesirable environment for a specified period.

CATEGORY B

Category B diversion options are-

- (1) Any of the options under Category A provided that where a maximum period has been imposed under paragraphs (3), (4), (5), (6), (7), (8), (9), and (10), the maximum period shall not exceed six months;
- (2) Compulsory attendance at a specified centre or place for a specified vocational or educational purpose for a period not exceeding eight hours each week, for a maximum of six months;
- (3) Performance without remuneration of some service for the benefit of the community under the supervision or control of an organization or institution, or a specified person or group identified by the probation officer for a maximum period of fifty hours, and to be completed within a maximum period of six months;
- (4) Provision of some service or benefit to a specified victim or victims which the child or the family can afford;
- (5) Payment of compensation to a maximum of K I 0,000 to a specified person, persons, group or institution where the child or his family is able to afford this;
- (6) Where there is no identifiable person or persons to whom restitution or compensation could be made, provision of some service or benefit or payment of compensation to a community organization, charity or welfare organization;
- (7) Referral to appear at a victim-offender mediation or other restorative justice involving family members at a specified place and time; and
- (8) Any two of the options listed used in combination.

CATEGORY C

Category C diversion options are:

- (1) Referral to a programme with a residential requirement, where the duration of the programme does not exceed six months, and no portion of the residence requirement exceeds a maximum of fifteen nights during the operation of the programme;
- (2) Performance without remuneration of some service for the benefit of the community under the supervision and control of an organization or institution, or a specified person or group identified by the probation officer for a maximum period of two hundred and fifty hours, to be completed within a maximum period of twelve months;

- (3) Where a child is and is not attending formal schooling, compulsory attendance at a specified centre or place for a specified vocational or educational purpose for a maximum period of not more than thirty-five hours per week, to be completed within a maximum period of six months;
- (4) Referral to counselling or therapeutic intervention which shall be in conjunction with any of the options listed in this category,

SIXTH SCHEDULE

(s. 141)

Child offenders charged with the following offences shall be detained in accordance with section 141:

OFFENCE

1. Offences punishable by death
2. Attempting to murder
3. Attempting to murder by convict
4. Accessory after the fact to murder
5. Written threats to murder
6. Conspiracy to murder
7. Aiding suicide
8. Disabling in order to commit felony or misdemeanour
9. Stupefying in order to commit felony or misdemeanour
10. Acts intended to cause grievous harm or prevent arrest
11. Preventing escape from wreck
12. Intentionally endangering safety of persons travelling by railway
13. Attempting to injure by explosive substance
14. Maliciously administering poison with intent to harm
15. Infanticide
16. Manslaughter

SEVENTH SCHEDULE

(s. 147)

REFORMATORY CENTRE AND SAFETY HOME ORDERS

In the Child Justice Court sitting at:.....

Child Case Number: (hereinafter called the child) who appears to the court to be a child having been born as far as can be ascertained, in or about the day of.....,20 has this day *been found to be responsible for or having been charged with the following offences-

.....
.....
.....
.....
.....

..... or *having been found to be in need of care, control and protection.

IS HEREBY ORDERED to be sent FORTHWITH (or on the day of, 20....) to a reformatory centre/safety home to be kept there until the child has been released on the recommendation of the Child Case Review Board or until the child has been discharged/released on bail/acquitted.

AND it is further ordered that the Police officers of the Republic or shall be responsible for conveying the child to such reformatory centre/safety home as may be specified by the Child Case Review Board.

* AND it is further ordered thatresiding atbeing the parent or guardian or other person hitherto having custody of the child shall pay to the weekly (monthly) sum of K until the child ceases to be subject to this order.

* AND it is further ordered that until the child is sent to the said reformatory centre/safety home in pursuance of this order he or she shall be kept in or is committed to the custody of

Dated this day..... of,20

Signed:.....

Magistrate/Chairman

*Delete if inappropriate

EIGHTH SCHEDULE

(s. 159)

REFORMATORY CENTRE AND SAFETY HOME (MANAGEMENT) RULES

- | | |
|---|---|
| 1) These Rules may be cited as Reformatory Centre and Safety Home (Management) Rules. | Citation |
| 2) Reformatory centres and safety homes shall provide for the following minimum services and conditions-
a) education, recreation and health care;
b) parent/child interaction centre;
c) counselling services;
d) proper hygiene and sanitation;
e) adequate nutrition, proper clothing and bedding; and
f) communication materials. | Minimum standards of safety homes |
| 3) In addition to the services mentioned in rule 2, reformatory centres and safety homes may where circumstances do require, facilitate any other services by allowing service providers access to the centre or home or by allowing children to have access to the services. | Other services |
| 4) The officer-in-charge of a reformatory centre or a safety home shall keep a register in which details of each child shall be kept. | Records |
| 5) Details of the register shall be examined by the Board. | Inspection of the Register by the Board |

Passed in Parliament this twenty-eighth day of June, two thousand and ten.

M.M. KATOPOLA

Clerk of Parliament