

## **Handout 4.2 Extracts from Protection of Children Bill of 2009**

This handout has been prepared by Help & Shelter to use in the training of health care workers. Sections of the Protection of Children Bill are extracted here. It is expected that this Bill would come into law in 2009. The full text of the legislation is available from the Parliament Buildings or the website of the Parliament at <http://www.parliament.gov.gy>

*An ACT to provide for the protection of children at risk, children in difficult circumstances and children in general and for related matters.*

### **From Section (2) Part (1)**

In this Act (*definitions*)

“child” means a person under the age of eighteen years, whether born in or out of wedlock, who has never been married, and includes -

- a) a step child or child adopted by law; or
- b) a child of the family

except that in the case where a person has special needs that person shall be a child under this Act regardless of his age

“mental impairment” means a state of arrested or incomplete development of mind which includes a significant impairment of intelligence and social functioning which results in that person having special needs;

“physical impairment” means lacking part of or all of a limb, or having a defective limb, organ or mechanism of the body.

“parent” unless the context means otherwise implies means a person's mother or father or stepmother or stepfather and includes adoptive parents as well as a person who has been treated as a child of the family.

## **PART II GENERAL PRINCIPLES**

3. This Act shall be interpreted and administered in accordance with the following principles and due consideration must be given to these principles by the court or any other body or entity that is charged with the administration of these provisions -

- (a) the overriding and paramount consideration in any decision made under this Act shall be the best interests of the child;
- (b) every child is entitled to be assured of personal safety , health and well-being;
- (c) the family is the basic unit of society responsible for the safety , health and well being of the child;
- (d) the members of a community have a responsibility to support the safety, health and well-being of a child;

.....

(g) the cultural heritage of a child shall be respected

.....

(h) in the absence of evidence to the contrary , there shall be a presumption that a child twelve years of

age or over is capable of forming and expressing an opinion regarding his care and custody  
.....

5. All relevant factors shall be considered in determining a child's best interests, including
- a) the child's safety and health .....
  - (i) any issues to be considered where a child is HIV positive or has special needs

### **Part III – Protective Intervention**

6. A child is in need of protective intervention where the child -
- (a) is , or is at risk of, being physically or emotionally harmed by the action or lack of appropriate action by the child's parent, guardian, person in whose care the child is left or other persons living in or visiting the household;
  - (b) is, or is at risk of, being sexually or emotional abused or exploited by the child's parent, guardian, person in whose care the child is left or other persons living or visiting the household;
  - (c) is, or is at risk of, being physically harmed by a person and the child's parent, guardian or person in whose care the child is left, does not protect or seek protection for the child;
  - (d) is, or is at risk of, being sexually abused or exploited by a person and the child's parent, guardian or person in whose care the child is left does not protect the child
  - (e) is being emotionally harmed by a person.
  - (f) is in the custody or *de facto* custody of a person who refuses or fails to obtain or permit essential medical, psychiatric, surgical or remedial care or treatment to be given to the child when recommended by a qualified health practitioner;
  - (g) is abandoned
  - (h) has no living parent or has a parent who is unavailable to care for him and who has not made adequate provisions for his care;
  - (i) is living in a situation where there is violence;
  - (j) has -
    - (i) been left without adequate supervision
    - (ii) allegedly killed or seriously injured another persons or has caused serious damage to another person's property; or
    - (iii) on more than one occasion caused injury to another person or other living thing or threatened, either with or without weapons, to cause injury to another person or other living thing, either with the parent's encouragement or because the parent does not respond adequately to the situation; or
    - (iv) is being exposed to drugs or obscene material or objects

### **Section 7 Duty to report**

- (1) Where a person has direct information that a child is or may be in need of protective intervention, the person shall immediately report the matter to the Director [of the Childcare and Protective Agency] , a probation officer appointed by the Public Service Commission or a police officer.
- (2) Where a person makes a report under subsection (1), the person shall report all information in his possession
- (3) Where a report is made to a police officer under subsection (1), the police officer shall immediately inform the Director of the said report, investigate the matter promptly , and inform the Director of the findings of the investigation
- (4) this section applies, notwithstanding the provisions of any other law, to a person referred to in

subsection (5) who, in the course of his professional duties, has reasonable grounds to suspect that a child is or maybe in need of protective intervention.

- (5) Subsection (4) applies to every person who performs professional or official duties or is in a position of trust with respect to a child, including -
  - (a) a health care professional;
  - (b) a school principal, teacher, social worker, family counsellor, coach, religious leader, operator or employee of a child care service;
  - (c) a police officer;
  - (d) an attorney-at-law;
  - (e) a member of a non-governmental organisation which provides special services for children;
  - (f) a person who is entrusted with the care of children;
  - (g) a mediator; and
  - (h) a coroner
- (6) A person pursuant to subsections (4) and (5) who is found to have had knowledge and failed to make a report commits an offence and shall be liable on summary conviction to a fine of fifty thousand dollars.
- (7) This section applies notwithstanding that the information is confidential or privileged, and an action does not lie against the informant unless the making of the report is done maliciously or without reasonable cause
- (8) A person shall not interfere with or harass a person who gives information under this section.
- (9) A person who contravenes subsection (8) commits an offence and is liable on summary conviction to a fine of two hundred thousand dollars or to imprisonment for a term of twelve months
- (10) Notwithstanding any other law, a complaint under subsection (10) shall be laid within three years from the day when the matter of the complaint arose.

## EXPLANATORY MEMORANDUM

This Bill seeks to provide for the protection of children generally, children at risk and children in difficult circumstances.

Clause 3 sets out the general principles to be applied when interpreting and administering the provisions of the proposed legislation.

Clause 4 sets out the conditions to be applied when providing child and family services whether provided by the State, the Board or other persons or entities.

Clause 5 outlines all relevant factors to be considered in determining a child's best interests.

Clause 6 lays down the situations which give rise to a need for protective intervention.

Clause 7 compels a person who is aware that a child is in need of protective intervention to report the matter and sets out the reporting procedure.

Clause 8 provides that the Director and a social worker shall assess whether a child is in need of protective intervention when the information is received and sets out the duties of the Director or social worker after the assessment.

Clause 9 provides that the Director, social worker or a person appointed by the Director may visit or interview the child in private and for the Director or social worker to notify the parents of the interview.

Clause 10 states that the Director or social worker may apply ex parte to a Judge for an order where access to the child is denied and lists some of the orders that a Judge may make. It also provides for where the child is removed, the Director or social worker must return the child except where further action is taken by the Director or social worker and for the Police to assist in enforcing the Judge's order.

Clause 11 provides for not disclosing the location of child. Subclause (1) provides for a person who does not comply with the order under section 10 to be arrested and brought before the Judge for hearing into his non-compliance with the order. Subclauses (2) and (3) state that the Judge, after hearing the reasons for not complying with the order, may order that the person may be imprisoned or for the Judge to draw adverse inferences during the hearing of the matter.

Clause 12 provides for the Director or social worker to apply to the Court for an order that records may be produced and sets out the circumstances under which an application can be made to the Court. It allows for an ex parte application to be made.

Clause 13 allows for the Director or social worker to apply for an order that a child be protected from contact with another person and sets out the procedure to be followed by the applicant. It also outlines the orders that the Judge may make and provides for the Judge to take appropriate action where there is non-compliance with an order. It also allows for the persons affected by the order to apply to the Judge to vary, rescind or extend the order; and for a police officer to assist in enforcing an order.

Clause 14 allows the Director or social worker to apply to the Judge for the removal of a child who is in need of protective intervention and provides for the Judge to make an order authorising the Director or social worker to remove a child by force if necessary. It also provides for a police officer to assist the Director or social worker to remove a child.

Clause 15 sets out the time-line to hear and decide matters referred to in section 14.

Clause 16 states that the Director or social worker shall provide counselling to a child.

Clause 17 provides for care of a child after removal and for the child to be medically examined. It also provides for medical care of a child where necessary.

Clause 18 sets out the procedure to be followed where a child is in need of protective intervention but the child is not removed; it also provides for the Director or social worker to apply to a Judge with or without counsel for a protective intervention hearing and for a Judge to make appropriate orders under section 21.

Clause 19 empowers the Director or social worker to apply to Judge for an order where a child is in need of medical treatment but his or her parents refuse to obtain or permit this treatment and sets out procedure to be followed.

Clauses 20 and 21 sets out the procedure to be followed for a protective intervention hearing and the orders that a Judge may make.

Clause 22 provides for Judge to make an order that the parents of a child continue to financially support a child where a child is removed.

Clause 23 provides for a Judge to extend a temporary order under section 20 in exceptional circumstances and set out the procedure to be followed where an extension is applied for.

Clause 24 provides for the parties to arrive at a settlement by means of a pre-trial settlement conference, a family conference, mediation or other means of alternative dispute resolution and for any agreement reached to be made into a final Court order.

Clause 25 provides for the Director to make decisions regarding a child where the Director is granted a temporary order under section 20, except decisions relating to medical treatment or a decision under the Adoption of Children Act 2008.

Clause 26 provides for the Director to make decisions for placement of a child where an order for continuous custody is made; it also allows for the Director to approach the Court for directions as regards the future of a child.

Clause 27 sets out conditions which brings a final order to an end.

Clause 28 provides for rescission of a continuous order where the circumstances have change significantly from the date of a continuous order and procedure to be followed. It allows for the Director to continue to monitor a child and for a child to continue to receive counselling where a continuous order is rescinded.

Clause 29 provides for discontinuance of a protective intervention hearing where a child is returned before the hearing.

Clause 30 states that hearing under this Act is of a civil nature and may be informal. It allows for the admission of evidence including video-taped oral statements.

Clause 31 provides for a Director or social worker to attend and have audience in Court in respect of a matter under this Act.

Clause 32 allows for a person who has custody or care of a child to be heard in Court.

Clause 33 allows for a child to be heard in Court.

Clause 34 empowers a Judge to vary the time for service of notices and also to dispense with notice. Clause 35 allows for service of a copy of an original document and for personal service of documents to be proved by written or oral statements under oath.

Clause 36 provides for full disclosure of information relevant to the hearing; it prohibits the disclosure of the identity of the complainant except where the complainant agrees or where a Judge so orders.

Clause 37 provides that information obtained at a family conference, mediation or other means of

alternative dispute resolution is confidential. It however allows for disclosure in certain circumstances, but creates an offence where the child in question is identified in the media.

Clause 38 provides for the making of a consent order.

Clause 39 allows for a hearing of proceedings under this Act and the Custody, Access, Guardianship and Maintenance Act to be done together.

Clause 40 allows for a variation of an order where circumstances have changed since the original order.

Clause 41 states the facts to be considered by the Director or social worker when placement of a child is done. It also allows for a child to be placed with the non-custodial parent or caregiver.

Clause 42 provides for the Director or social worker to make an agreement for service and financial support for a child.

Clause 43 allows the Director or social worker to provide information concerning a child to the caregiver and parent of a child.

Clause 44 allows the Director or social worker to remove a child from the care of a caregiver without notice.

Clause 45 states that a child who is removed under section 44 shall be entitled to counselling.

Clause 46 gives a person over twelve years and a person who has custody of a child right of access to certain information.

Clause 47 provides for denial of access to information to a person in certain situations.

Clause 48 allows for a Director to authorise disclosure of information without consent in certain situations.

Clause 49 creates a criminal offence against a person who contributes to a child being in need of protective intervention and sets out the penalty for that offence.

Clause 50 creates offences against a person who causes drugs or other obscene materials to come into a child's possession, to be ingested by the child for the purposes of trafficking or where a child is forced to engage in prostitution, and sets out the penalties for the offences.

Clause 51 provides that a person shall not remove or cause a child to leave the care or custody of the Director.

Clause 52 provides for the establishment of an advisory committee by the Minister and appointment of persons to that committee.

Clause 53 imposes a duty on the Minister to keep a list of individuals who are unsuitable to work with children and for removal of persons from that list.

Clause 54 provides for an individual who is or has been employed in a child care position and certain conditions are fulfilled to be included in the list.

Clause 55 provides for person included in the list to appeal against his inclusion in certain circumstance.

Clause 56 sets out the effect of inclusion on a person where he is on the list.

Clause 57 provides for the setting up of a Board and for the Minister to make provisions by regulations for the conduct of appeals by the Board.

Clause 58 empowers the Minister to make orders for removal of difficulties in giving effect to the provisions of the proposed legislation.

Clause 59 creates an offence against a person who contravenes the provisions of this Act and states the penalty for the offence.

Clause 60 provides for applications under this Act to be heard in camera.

Clause 61 states that appeals for the decision of a Judge shall be to the Court of Appeal.

Clause 62 provides for the Minister to make regulations to give effect to this Act.

Clause 63 provides for the Director and duly authorised officers who operate under this Act to be protected from personal liability.

Clause 64 provides for supervision and control of the Childcare and Protection Agency over all administrative authorities functioning under the proposed legislation.

Minister of Human Services and Social Security.