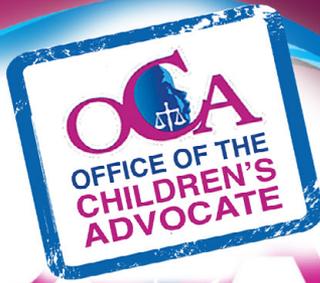




Child Justice Guidelines



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Office of The Children's Advocate

Child Justice Guidelines





FOREWORD

THE HONOURABLE MRS. JUSTICE ZAILA McCALLA, O.J.
CHIEF JUSTICE OF JAMAICA

I am honoured to be associated with the publication of the Child Justice Guidelines having regard to the pressing need to address challenges being faced by our children who come in contact with the justice system.

The reality is that the safety, security, health, education and ultimately the survival of our children have been under threat for a very long time. Consequently, legal systems all over the world have for decades recognized the need to safeguard the interest of children as a special group worthy of particular attention and treatment.

International conventions and best practices require countries to promote the establishment of laws, procedures and institutions that respect the rights of children that interact with the justice system in any capacity.

Over the years I have worked assiduously and closely with various stakeholders (both locally and internationally) including health, education and social service professionals to conduct sensitization sessions for Judges and Parish Judges in order to foster a child friendly justice system within our legal framework.

Although much has been accomplished, it has been recognized that much more remains to be accomplished. The establishment of these procedural guidelines/best practices is most timely.

The focus it has placed on dealing with children in conflict with the law, child victims, witnesses and children deemed to be uncontrollable or in need of care and protection will undoubtedly assist in furthering the objectives of the laws that have been enacted to protect and safeguard the rights of our children.

I endorse and commend the work accomplished by the Office of The Children's Advocate in collaboration with other stakeholders. I encourage all those who interact with children in our justice system on a regular basis to familiarize themselves with the contents of this important Guide as we work towards improving child justice in Jamaica.

The Hon. Mrs. Justice Zaila McCalla, O.J.
Chief Justice, Jamaica



PREFACE

MRS. DIAHANN GORDON HARRISON, LL.B.
CHILDREN'S ADVOCATE OF JAMAICA

The Office of The Children's Advocate is tremendously pleased that the Child Justice Guidelines have become a reality. Indeed, these Guidelines are timely and it is our hope that they will be used as a resource handbook by all those who may interface with any child within the justice system. The trauma and fear that many children experience as a result of contact with the justice system have been observed for quite some time; we have heard of it from some of the very persons who work in the system, from the parents and other relatives of these children, and perhaps most importantly, from the children themselves. The Experiences of Children in State Care Who Appear before the Courts which was a special study undertaken by the OCA in 2009 documented in very real terms some of the negative experiences that children of all categories faced. Children who were victims of crime, witnesses in court proceedings and those in conflict with the law were canvassed and informed the findings of that report.

This reality coupled with the OCA's continued concern about this issue has established the basis for these Guidelines. As the Commission of Parliament which is mandated inter alia to "issue guidance on best practice in relation to any matter concerning the rights or best interests of children," we have sought to recommend through this work certain protocols that will enhance the quality of service that is provided for children who must interface with the justice system.

The application of these Guidelines will ultimately lead to a modified and more child focused approach as much emphasis has been placed on observing the rights to which all children are entitled and there has been an underscoring of the need to be mindful of particular vulnerabilities that children have as a result of the various developmental phases that they go through. In short, the OCA's position is that the traditional processes within our justice system have been created for, and geared toward adults. The time has come for appropriate adjustments to be made so that the various processes can adequately accommodate the varying needs that children may have as a result of their special needs.

To this end, these Guidelines are aimed at equipping those who work within the justice system with objective measures for meeting the needs of children who come into contact with the judicial process. They cover areas such as police interaction with children, the provision of reasonable information to the families of these children, guidance on best practice that ought to obtain during a court sitting as well as court orientation for the child by the prosecutor, defence counsel, Victim Support Unit and other professionals. The process used was an extremely consultative one with the clear objective being at all times to facilitate and enhance the protection of the rights of these children and to significantly minimize (or where possible to totally eliminate) any possibility of re-victimization by the system.

My unreserved thanks go to UNICEF Jamaica for its commitment to this project and its financial support, without which these Guidelines would not be possible. Additionally, I wish to express my appreciation to the entire OCA team and particularly the members of the Steering Committee

comprised of Ms. Sharian Hanson & Ms. Shannon Hendricks, both Legal/ Policy Officers and Ms. Chenelle Taylor, Research Assistant.

Ms. Nicole Hayles, Manager - Public Education & Special Projects, OCA and Mr. Kemar Lawes, IT Officer, OCA are also thanked for their contribution. To all those other stakeholders, both public and private, who cooperated with the OCA in this effort and gave so willingly of their time and their views, thank you.

Let us together commit to positively re-shape the experiences that these children will have within our judicial system. The vision of these Guidelines is that with time, Jamaica will be able to boast a judicial system in which the fragilities of children are observed and the highest standards of juvenile justice are attained. I commend them to you.



Diahann Gordon Harrison, LL.B.
Children's Advocate of Jamaica

ACKNOWLEDGEMENTS

We would like to formally thank the following stakeholders, departments, agencies and individuals for their invaluable contribution to the development of these Guidelines.

- Chief Justice of Jamaica - The Hon. Mrs. Justice Zaila McCalla, OJ
- United Nations Children's Fund, Jamaica
- Ministry of Youth and Culture
- Ministry of Justice
- Ministry of Health
- Office of The Director of Public Prosecutions
- Department of Correctional Services
- Office of The Children's Registry
- Child Protection and Family Services Agency (CPFSA) (formerly CDA)
- Victim Support Unit
- Centre for the Investigation of Sexual Offences and Child Abuse (CISOCA)
- Dr. Clayton Sewell - Forensic Psychiatrist and President of the Jamaica Psychiatric Association
- Dr. Wendel Abel - Head of Psychiatry, University Hospital of the West Indies (UHWI)
- Family and Children's Court Judges
 - Her Hon. Mrs. Paula Blake-Powell
 - His Hon. Mr. Charles Pennycooke
- Defence Counsel
 - Mrs. Arlene Harrison-Henry
 - Mr. Vincent Wellesley
 - Mrs. Fara Brown - Senior Tutor: Norman Manley Law School
- Hear the Children's Cry
- Jamaicans for Justice
- Jamaica Civil Society Coalition
- Mr. Clyde Williams, Project Consultant



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INTRODUCTION

The Office of The Children's Advocate (OCA) is a Commission of Parliament created under the Child Care and Protection Act, 2004. The mandate of the OCA is to protect and enforce the rights and best interests of children in Jamaica. The OCA is concerned about the violation of child rights which sometimes occurs in the service delivery provided to child victims, child witnesses, children in conflict with the law, children who are deemed to be in need of care and protection and children who present with behavioural challenges. These Guidelines constitute part of the OCA's response and have been developed through a consultative process with various stakeholders and partners.

The Guidelines are issued under Paragraph 11(2) of the First Schedule to the Child Care and Protection Act (CCPA) which provides that:

'The Children's Advocate may, after consultations with such bodies and persons as [s]he thinks appropriate, issue guidance on best practice in relation to any matter concerning the rights or best interests of children.

'Several international documents have informed the formulation of these Guidelines. Some of these include:

- United Nations Conventions on the Rights of the Child;
- United Nations Rules for the Protection of Juveniles Deprived of their Liberty;
- United Nations Standard Minimum Rules for the Administration of Juvenile Justice;
- Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime [UN Economic and Social Council Resolution 2005/20, July 22, 2005]; and

- Committee on the Rights of the Child, General Comment No.10 (2007), Children's Rights in Juvenile Justice.

The same is true for local Reports and Studies that have been consulted and have informed the development of these Guidelines. These include:

- Experiences of Children in State Care who appear before the Courts [OCA, 2009];
- The Report of the Task Force on the New Regime for Juveniles in Remand and Correctional Facilities in Jamaica [Public Sector Transformation Unit, Office of the Cabinet, 2011];
- Report on the Situation of Children in the Care of the Jamaican State [Jamaicans for Justice, 2006 and 2009].

In the end, these Guidelines reflect international and local best practices, are data-driven, evidence-based and circumscribed by provisions of Jamaican laws including: the Charter of Rights, the Child Care and Protection Act and the Bail Act.

The intention is that minimum standards are established for the protection of children who come in contact with the justice system, whether they are victims, witnesses, deemed to be in need of care and protection, reported as having behavioural challenges or alleged offenders.

The Guidelines are to be applied impartially, without discrimination of any kind as to race, colour, sex, age, religion, nationality, political or other opinion, cultural beliefs or practices, property, birth or family status, ethnic or social origin, social status, sexual orientation, diversity or disability. They have been organized in Parts specific to each category of children and provide a quick reference tool to care givers and professionals who provide service to the children who come in contact with the justice system.

DEFINITIONS

“child” means any person under the age of eighteen (18) years.

“child in conflict with the law” means any child who comes into contact with the justice system as a result of being suspected or accused of committing an offence.

“child in need of care and protection” means any child who satisfies the conditions in section 8 of the Child Care and Protection Act [See Schedule I to these Guidelines for section 8 of Act].

“child specialist police” means a police officer trained in the proper treatment and handling of children who may come into contact with the child justice system and one who has been sensitized about the basic human rights to which all children are entitled.

“support person” includes the Children's Advocate or her designate and where appropriate, the parents or guardians of a child, Victim Support Unit (VSU) representatives, children's officers from the Child Protection and Family Services Agency (CPFSA), defence counsel and counsel holding a watching brief.

‘child with a behavioural challenge’ means any child whose parent/guardian reports that he/she has a behavioural issue and that child, after having been assessed by a behavioural specialist, has been in fact found to be exhibiting behavioural challenges and a type of treatment or other support has been recommended for the child.

PART ONE



Part One

General Principles

- 1. Dignity**
Every child is a unique and valuable human being whose individual dignity, needs, interests and privacy should be respected and protected.
- 2. Vulnerability**
Childhood is a particularly vulnerable time and for that reason service delivery and treatment of children in the justice system should recognise and be conditioned by that understanding.
- 3. Best interests of the child**
Every child has the right to have his or her best interests given primary consideration in the decisions that affect them.
- 4. Non-discrimination**
Every child has the right to be treated fairly and equally, regardless of his or her or the parents' or guardians' class, social origin or status, address, colour, gender, race, religion, political or other opinion, disability, diversity, birth, health status, sexual orientation or other status.
- 5. Child-sensitive**
All children should be treated in a caring and sensitive manner, taking into account their personal circumstances and immediate needs, age, gender, disability and level of maturity and fully respecting their physical, mental and moral integrity.

6. Safety and well-being

The child justice system shall uphold the rights and safety and promote the physical and mental well-being of all children. The system should also ensure that any reaction to alleged child offenders be proportionate to the circumstances of both the alleged offender and the offence.

7. Deprivation of liberty - last resort

Children should only be deprived of their liberty as an option of last resort and for the minimum period necessary. If and when deprived, primacy is to be given to rehabilitation and reintegration into society.

8. Right to participation

Every child has, subject to procedural law, the right to express his/her views, opinions and beliefs in his/her own words, and to contribute to the decisions affecting his/her life and to have those views considered according to his/her abilities, age, intellectual maturity and evolving capacity.

9. Family Life

The family is the preferred environment for the care, upbringing and protection of children and this responsibility rests primarily with the parents; separation of children from parents, and by extension their siblings, should be a last resort.

PART TWO



Part Two

Children In Conflict With The Law

Guidelines regarding children in conflict with the law are largely informed by Article 40 of the United Nations Convention on the Rights of the Child (UNCRC), which states, inter alia, the following:

1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.
2. To this end, . . . States Parties shall, in particular, ensure that:
 - (b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:
 - (i) To be presumed innocent until proven guilty according to law;
 - (ii) To be informed promptly and directly of the charges against him or her, and, if appropriate through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;



- (iii) To have his or her privacy fully respected at all stages of the proceedings.
- 3. A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

A. REPORT, INVESTIGATION AND DETENTION

Police Guidelines

10. Multi-disciplinary/Multi-agency approach

The police should be involved in, and promote a multi-disciplinary and multi-agency approach in cases where children are victims and alleged offenders (see Schedule 9 to these Guidelines for Addendum to Multi-agency Approach). Children should benefit from the involvement of police personnel who are specially trained and are alert to child rights issues and exposed to the appropriate guidelines that can inform the manner in which they treat children with whom they come in contact.

11. Arrest and Family Notification

- (1) Upon the arrest of a child, the child's parents or guardians should be immediately notified (by phone or other efficient means) by the police of the arrest and told the reason for arrest. The child should be told at the time of the arrest in plain, simple, child-friendly and age appropriate language, so that the child understands, the reason for arrest.
- (2) It is important to provide information to the child's parents or guardians on the child's location, the name of a responsible member of the Jamaica Constabulary Force (JCF), the phone numbers for the location at which the child is being held, and of any special needs that the child may have at the time of notification. Any transfer of the child to another location should be immediately communicated (by phone or other efficient means) to the parents or guardians of the child who should be kept aware of court dates and in particular the first mention date in court.



12. Assessment for medical attention

Child suspects who are arrested should be assessed by the police to determine whether they need medical attention. If medical attention is needed then the child is to be taken, without delay, to the nearest health facility or seen by a medical health professional.

13. Unrepresented child

The Office of the Children's Advocate or Duty Counsel on the Legal Aid List is to be immediately contacted by the police where a child suspect is arrested and does not have legal representation.

14. Child detained but not charged

A child who is arrested or detained and not charged within 24 hours of the arrest/detention should be released into the care of the parents or guardians once such release would neither jeopardize nor compromise the investigations and other issues such as any security concerns will not be adversely affected. Children are to be detained only in approved institutions.

- (1) Where the alleged child offender is to be put on an Identification Parade this should be held within 72 hours of the arrest or detention. If for any reason the Parade is not held within the stipulated time frame, a written account must be provided for the non-compliance and as soon as practicable after, the Parade must be convened.

15. Right to legal representation

No interview of a child suspect or defendant in the absence of an attorney-at-law should take place except to obtain very basic information such as name, age and address of child, and name, age, telephone number, email, address of parents/guardians, and any other contact information.

Children arrested have a right to legal representation and to communicate regularly and confidentially with their legal advisers.

16. Diversion

The Police should give consideration, wherever appropriate, to dealing with alleged child offenders without resorting to the criminal justice system. Attorneys-at-law for alleged child offenders should consider it part of their representation to introduce the concept of Diversion at the earliest and most appropriate time. The decision whether to divert is to be taken in accordance with the principles and criteria laid down in the Government of Jamaica's Child Diversion Act.

17. Bail

- (1) Where a child is charged with a criminal offence the police should, without delay, consider the question of bail. Where the offence is murder or some other grave offence and the police think it is inappropriate to consider bail or where the police for some other reason do not grant bail, the child should be taken within 24 hours of being charged to a court for the question of bail to be determined. It should be noted that for this purpose, the court in question need not be a Family Court or Children's Court.
- (2) The police may take the child before any Parish Court Judge' whether in Chambers or open court, including Parish Court Judges who sit in civil courts.

Any Parish Court Judge may properly consider the circumstances of any case as the Parish Court Judge has the same powers as a Judge of the Family or Children's Court [See: section 4 of the Bail Act and section 67 of the CCPA, both of which are attached to these Guidelines as Schedule(s) 2 and 3, respectively].

- (3) The police should not wait to complete the court file before taking the child defendant before the court if the file cannot be completed within 24 hours of charge. The child defendant should be taken before the court on the basis of the Information (the charge document) and on the victim's written statement or the written statement of a witness who gives a statement as to the material allegations against the child defendant. Where there are no witness statements on file, the investigating officer should present to the Clerk of Courts or other appropriate person, a summary of the allegations along with the Information.
- (4) Where a child defendant is being taken before the court for the first time the police should consider having the matter listed for the afternoon session of the court where it is less crowded or where appropriate, at the end of the day's session.

18. Detention and presumption of innocence

- (1) Detention pending a hearing/trial should be used only as a measure of last resort and for the shortest possible time. The defendant child in detention is presumed innocent and should be treated as such.

- (2) Untried children should be separated from convicted children. Child detainees who have not been charged with an offence should be held separately from the other categories of detainees.
- (3) Children who are reported as having a behavioural challenge should be kept separate from children who are in need of care and protection and separate from children who are charged with an offence.
- (4) Children in need of care and protection should be immediately taken to a Place of Safety or other approved facility. These children should not be kept in the holding area of police stations.
- (5) Children in detention pending trial shall be kept separate from adults and shall be detained in a separate institution or in a separate part of an institution also holding adults with care taken that those children and adults do not interact with each other. The conditions in these facilities should achieve minimum standards that are suitable for reasonable occupation by children. Regard must be had to issues such as the existence of adequate ventilation, air quality, lighting and size of the facility.
- (6) While in custody, children should receive care, protection and the necessary individual assistance (social, educational, vocational, psychological, medical, physical and spiritual) that they may require in view of their age, sex, personality, mental, physical development and diversity. When dealing with children who suffer from any category of disability, particular care must be exercised, and their special needs are to be ascertained and addressed appropriately.



19. Right to Property and Privacy

- (1) All possessions taken from the child by the police should be logged in a book maintained for that purpose. Each entry is to be signed by the police and the child. Where practical the police should issue a receipt for the items taken from the defendant child.
- (2) Where a child's property is not required as part of the case or the child is not permitted to keep such property, it should be turned over to the parents or guardians of the child or where the child is in State custody, to the custodians of the child. A written record should be made of all such property that is handed over.
- (3) The child's right to privacy is to be respected, including personal privacy and confidentiality of communications with family and with the child's attorney-at-law.
- (4) The police should respect the child's right to privacy during the time that the child is in their custody. This would help to prevent, among other things, harm being caused to the child by undue publicity or by the process of labelling. Information that may lead to the identification of an alleged child offender or victim should not be published as to do so may result in stigmatization of the child.
- (5) Information relating to a child's involvement in the justice process should be protected by the police. This can be achieved through maintaining confidentiality and restricting disclosure of information that may lead to identification of a child who is a victim, witness or defendant in the justice process.

The police should not disclose the name of child victims, defendants and witnesses to the media or to any other person or entity that is not directly relevant to the particular proceedings as such an individual would not be authorized/entitled to receive such information.

20. Non-discrimination

The police should conduct themselves in a manner which is not discriminatory towards alleged child offenders and other children deprived of their liberty and in particular should not let personal views about social status or origin, colour, gender, race, age, disability, sex, religious beliefs, health status, political orientation, sexual orientation or any other personal considerations influence their behaviour or decisions.

21. Transportation of children in custody

- (1) Children should be transported in vehicles with adequate ventilation and light, and in conditions that should in no way subject them to hardship or indignity. Police should refrain from using handcuffs on children. Children should never be transported in the same vehicle as an adult detainee.
- (2) Children should arrive at court at least 20 minutes before the opening of court to give them sufficient time to adjust and prepare themselves for the court appearance. They should not be kept in holding areas with adults.

22. Medical Professionals and Psychiatric/Psychological Evaluations

Child Psychiatrists or Child Psychologists may be called upon by the court to evaluate children in conflict with the law. This evaluation should not be limited to an assessment of the child's readiness for trial, but should include an assessment of the child's mental status, an assessment of risk and any indications or signs of psychopathology.

B. COURT ORIENTATION

23. Guidelines for Defence Attorneys-at-law

- (1) Each child defendant should receive a minimum of two orientation sessions, one before their first court appearance, and another before the trial or other major hearing in the matter.
- (2) It is the responsibility of the attorney-at-law for the child defendant to organise these orientation sessions and should include the child's parents or guardians in the process.
- (3) Each child defendant should receive trial orientation not less than 48 hours before the trial or other substantive hearing. Trial orientation is to be conducted in child and age appropriate language and includes:
 - (a) Explanation of the role and function of the judge, the defendant, the complainant, the attorneys-at-law, jury, witnesses and court staff.



- (b) Explanation of the trial process in child and age-friendly language from the beginning of the process to the end including, the plea, selection of the jury, the giving of evidence with specific emphasis on cross-examination, the Judge's summing up, retirement of the jury and the verdict.
 - (c) Giving the child an opportunity to refresh his/her memory from any statement made in writing or in any video or other recording concerning the alleged offence.
 - (d) Giving the child an opportunity to respond to the allegations contained in the materials disclosed by the prosecution and the statements of the proposed prosecution witnesses.
 - (e) Giving the child an opportunity to ask questions and to have them answered.
 - (f) The child defendant should be specifically counselled by his legal advisers on the options available, and their respective consequences, if called upon by the Court to answer the charges.
- (4) The attorney-at-law for the child Defendant should contribute to the child's familiarization with the court environment, personnel, procedures and proceedings by explaining and being available to the child for the child to ask questions and receive answers.



- (5) The attorney-at-law for the child defendant should collect, and keep on file accurate and current contact information for the child defendant, his/her parents or guardians and witnesses. It is recommended that a standard form similar to the Form at Schedule 4 attached to these Guidelines be used for this purpose. Once completed, this form is to be placed on the file and amended when there are any changes to the contact information. The attorney-at-law for the child defendant should schedule a trial orientation session not less than 48 hours before the trial or other hearing. Where the defendant is in custody, the attorney should still seek to observe this requirement to conduct an orientation session with the child.
- (6) The attorney-at-law for a child defendant should ensure that the child participates fully in the process and must allow the child to express himself or herself freely to him/her, once the child is capable of so doing.
- (7) Attorneys-at-law who represent children in the custody of the State should provide each child with their contact information (e.g. business card) and inform the custodians to their representation and provide to the custodian all relevant contact information.
- (8) Attorneys-at-law for child defendants should conduct themselves in a manner which would assist in expediting the hearing/trial and should give priority in the settling of their diaries to cases involving child defendants and child victims. It is strongly recommended that the principles of criminal case management be adopted in this regard.



24. Orientation - Defendant in Custody

- (1) It is the responsibility of each agency to keep an up-to-date record of the Court dates for all child defendants in its custody and the name, address, email and phone numbers of the attorneys-at-law for each defendant. The particulars for each attorney-at-law should be received from the children and/or from the attorney-at-law directly. It should be borne in mind that the particular agency stands in the shoes of the parents or guardians.
- (2) Each agency should facilitate meetings between the child defendant and his/her attorney-at-law.
- (3) Defendants who are in the custody of the Department of Correctional Services are to be given sufficient opportunity to meet with and to receive court orientation in a private, confidential and secure setting, by an attorney-at-law of the child defendant's choice or one assigned to the child defendant.
- (4) If the child defendant is unrepresented, the agency with custody of the child should notify the OCA through the completion and transmission by email (or any other efficient means) of the Unrepresented Child Referral Form [See Schedule 5 to these Guidelines].

C. COURT APPEARANCES AND HEARINGS

25. Where the case of an alleged child offender has not been diverted, the proceedings should be conducive to the best interests of the child and should be conducted in an atmosphere of understanding, which allows the child to participate and to express himself or herself freely, once he or she is capable of so doing. Children who are represented should express themselves through their attorneys-at-law.

26. Guidelines for Judges/Magistrates

- (1) The court should schedule children's appearances in court in a way that is compatible with the child's normal school schedule; priority should be given to cases involving children so that they are heard first, at the beginning of the session. The lawyers in the case should alert the court where the case involves a child defendant or child victim.
- (2) The court should grant priority to cases involving child victims, over other pending cases on the list of the court in keeping with the principles of criminal case management.
- (3) The court should enquire if a child has received orientation as set out in this Part. Where the child has not received any orientation the court should consider adjourning the matter or having the hearing stood down to allow for orientation to take place. The court should endorse the best practice of making orientation a requirement before the commencement of any trial of a child defendant.



- (4) The Court should be particularly mindful of the child's right to participate and to express his or her views, opinions and beliefs freely, in the child's own words, and to contribute to the decisions affecting his or her life, including those taken in any judicial process and to have those views considered with due regard for the child's abilities, age, intellectual maturity and evolving capacity. Children who are represented should express themselves through their attorneys-at-law.
- (5) In accordance with Section 4 of the Child Care and Protection Act, where an unrepresented child comes before the court, the court should either grant a legal aid certificate to the child or in the alternative, inform the Children's Advocate. Where the Children's Advocate is to be informed, the court should cause to be completed the Unrepresented Child Referral Form (appended in Schedule 5 to these Guidelines) and have it transmitted to the OCA by electronic or other efficient means. The Unrepresented Child Referral Form should be sent to the Children's Advocate on the same day that the child appears before the court.
- (6) The parent or guardian is entitled to participate in the proceedings and may be required by the court to attend in the interest of the child. The court may however deny them participation if it is shown that their exclusion is in the child's best interest.

- (7) The court may give the child defendant the option of not attending sittings of the court which are administrative, and require only the parents or guardians to attend those sittings, subject to appropriate arrangements being made to secure the attendance of the child at subsequent sittings. The child defendant may choose to attend all of the sittings, including the optional ones.
- (8) Where a child defendant is being taken before the court for the first time consideration should be given to having the matter listed for the afternoon session of the court and for those matters to be dealt with in Chambers.
- (9) The court should ensure that police officers and other courtroom officials refrain from shouting the names of the children when the court is ready to hear their matters.

27. Questioning of Witnesses

- (1) The examination (chief, cross and re-examination) of child victims, child defendants and child witnesses should be carried out in a manner which, for example, is not aggressive, hostile, disrespectful, impolite or oppressive. The court should closely monitor the examination, and in particular cross-examination of child victims, witnesses and defendants in order to protect them from harassment or intimidation and ensure that the language used is age-appropriate.
- (2) Given that the attention span of children can be limited, the court should curtail lengthy questioning sessions.

The court may issue directions about the duration of a child's appearance in the witness box: time limits may be set. The child's testimony may be interrupted by breaks granted by the court in its own discretion or on the request of the child or by his/her support person. The court should at all times be mindful of the singular importance of a fair trial and should exercise its discretion in accordance with that overriding objective.

- (3) The court should monitor the appearance of the child during the giving of evidence to ensure that the child is not unduly tired, distressed or otherwise suffering undue discomfort.
- (4) The court should guard against and prevent the intimidation and harassment of witnesses by lawyers through methods, such as (a) asking irrelevant questions; (b) confusing the child with repetitive and/or rapid questioning, repeated interruptions to responses or by demanding unrealistically specific times and details; (c) shouting at the child.

28. Decision and Sentencing

- (1) Social Enquiry Report. In all cases, before the court renders a final decision, the background and circumstances in which the child is living and/or the conditions under which the offence was committed shall be properly investigated so as to facilitate the appropriate adjudication of the case by the court.

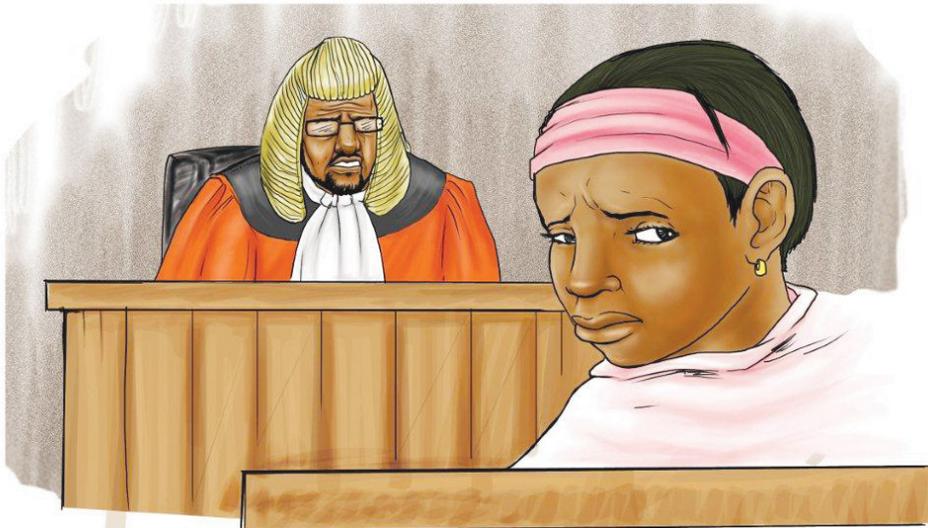
- (2) Guiding principles in adjudication and decision:
 - (a) The decision taken should always be in proportion not only to the circumstances and the gravity of the offence but also to the circumstances and the needs of the child, as well as to the needs of the society;
 - (b) Restrictions on the personal liberty of the juvenile should be imposed only after careful consideration and shall be limited to the minimum possible time;
 - (c) Judges are reminded that the deprivation of personal liberty should be the option of last resort and should not be imposed unless the juvenile is convicted of a serious criminal offence involving violence against another person or is persistent in committing other serious offences and there appears to be no other appropriate response;
 - (d) The well-being of the child shall be a guiding factor in the consideration of his or her case.
 - (e) The emphasis of the court when treating with child offenders, should always be on the objective of rehabilitating the child.
- (3) Children deprived of their liberty should receive care, protection and all the necessary individual assistance (social, educational, vocational, psychological, medical



and physical) that they may require in view of their age, sex, personality, mental and physical development.

When dealing with children who suffer from any category of disability, particular care must be exercised and their special needs are to be ascertained and addressed appropriately.

PART THREE





Part Three

Child Victims And Witnesses

A. THE REPORT AND STATEMENT TAKING PROCESS

Police Guidelines

29. The police should react without delay and in a child-friendly manner to any report (orally or in writing) of a case involving a child victim or child witness.

30. Family notification

The parents or guardians of a child victim or a child witness should be immediately notified by the police and kept informed about the developments in the case.

31. Notification of the Child Protection and Family Services Agency (CPFSA) and Victim Support Unit

The Police should bear in mind the multi-agency approach and contact the Child Development Agency and the Victim Support Unit without delay.

32. Assessment for medical attention

- (1) Child victims should be immediately assessed by the police to determine whether they need medical attention. If medical attention is needed then the child is to be taken, without delay, to the nearest health facility or seen by a medical health professional.

Victims of sexual crimes and other forms of assault and

battery including those children reported as having had conduct threatened against them in the context of the Domestic Violence Act (DVA), should always be seen by a medical health professional and a referral made to the Victim Support Unit. For alleged threats made against a child under the DVA, a referral should be made to the Children's Advocate.

- (2) The Police should, as a precaution and immediately upon first contact with a child, seek to determine whether the child appears to be a threat to him/herself or others, and if so take the child without delay to the nearest appropriate facility or arrange for the child to see an appropriate mental health professional.

33. Interviews and psycho-social Assessments

- (1) In order to avoid further hardships to the child, interviews, examinations and other forms of investigations should be conducted by trained professionals using a multi-agency approach. All these professionals ought to proceed in a sensitive, respectful and thorough manner and communicate to the child in age-appropriate language that the child uses and understands.
- (2) Every child victim should go through a standard assessment process to determine the nature of intervention and/or referral (if any) that may be required.
- (3) Child-friendly interview room. Child victims and witnesses should be taken to a private, comfortable and child friendly room/place to be interviewed by a child specialist police officer trained in the prevention and investigation of crimes allegedly committed by

and against children. A child care specialist should also be in attendance at the interview.

The aim of the interview is to have the child give a comprehensive statement in support of the complaint.

- (4) The police and the CPFSA should implement measures to limit the number of interviews of child victims and witnesses and treat them with dignity, compassion and extra care.
- (5) Statements from child victims should be recorded without delay except where a written medical opinion or written assessment from a mental health practitioner, or a trained psychologist recommends otherwise; in such an instance the statement should be recorded at the earliest time recommended by either of these professionals with due consideration for, the dangers associated with delays in promptly recording a statement from a victim of crime and the right of the defendant to disclosure. This guideline applies whether the statement is being recorded in writing or by video.
- (6) A child victim should not be asked to repeat the factual details of a complaint to representatives of different public agencies and professionals involved in service delivery to that child. The statement given to the police and the child care specialist appropriately edited (to protect the identity and other information of the alleged offender, if this is deemed to be necessary and for any other reasons) should be shared as authorized and on a need to know basis. This approach endorses and complies with the Multi-Agency approach in matters of this nature.

Specially-trained police and child care specialists of both genders are to be available to interview child victims and witnesses. Each police station/facility should have a directory of the relevant agencies for the purpose of referrals and have such information prominently displayed.

34. Guidelines for Medical Health Professionals and Support Staff

- (1) Medical examinations of child victims should be carried out by specially-trained personnel in a child-sensitive way and respectful of the social background of the child and with the necessary psychological support.
- (2) The examination should be carried out in a manner that ensures privacy and is sensitive to the child's feelings of embarrassment and vulnerability. The examination is to be stopped where the child indicates discomfort or withdraws permission for it to continue.
- (3) The medical health professional should establish basic ground rules for the interview and examination, including: telling the child to ask questions when s/he does not understand; telling the child that it is okay to say s/he does not know the answers to questions when that is so; telling the child that s/he may correct the interviewer/examiner when they get the facts wrong.
- (4) The medical health professional should prepare the child for the examination by explaining the process to the child and showing him/her the equipment to be used (where appropriate), and encouraging the child to ask questions about the examination.

- (5) If the child is sufficiently mature and it is deemed appropriate, the child should be asked whom he or she would like in the room for support during the examination.
- (6) The medical health professional should keep complete notes of the examination to include the recording of findings, diagnosis, treatment and prognosis in clear terms which can be used to facilitate continuity in interventions, care and treatment.
- (7) The medical health professional should understand that in some criminal proceedings the court will generally require expert findings and opinions from the professional and that she or he is, in the ordinary course, required to attend court to give evidence even though s/he may have provided a medical certificate. The appearance to give evidence should be set for the least disruptive time for the medical health professional in accordance with criminal case management best practices.
- (8) The medical health professional should prepare a detailed medical report for the court proceedings which should cover the nature of the injuries, diagnosis, treatment and prognosis in relation to the extent of a disability or the degree to which a recovery of the victim is expected. The medical report is distinct from the medical certificate; the report is usually relevant to civil proceedings and is usually much more detailed than the certificate. [sample medical certificate appended in Schedule 6 to these Guidelines]



B. COURT ORIENTATION

35. Guidelines for Victim and Witness Support Agencies

- (1) From the first contact with the justice process and throughout that process, child victims and witnesses as well as their parents or guardians should be promptly and adequately informed of certain matters in simple language by the relevant agency/professional. These include:-
 - (a) The availability of health, psychological, social and other relevant services as well as the means of accessing such services (VSU).
 - (b) The procedures of the criminal justice system (VSU and the prosecutor);
 - (c) The specific places and times of hearings and other relevant events (VSU and the prosecutor);
 - (d) The progress of the case, including the arrest and custodial status of the accused and any pending changes to that status (VSU, police, prosecutor);
 - (e) Existing opportunities to obtain compensation from the offender or through alternative civil proceedings or through other processes (The prosecutor and VSU).
- (2) The Victim Support Unit should assign a single person

to the child victim preferably one of the gender of the child's choice who has undertaken specific training on child-sensitive issues, including communicating with children and other relevant skills to accompany the child victim throughout the case.

- (3) The Victim Support Unit should have lead responsibility for working with other agencies in a multi-agency approach to execute the orientation sessions for child victims and witnesses. This includes communicating and working with the children, parents or guardians, and all professionals concerned with the case.
- (4) It is the responsibility of the Victim Support Unit in cases involving child victims, and child Crown witnesses to collect, maintain and keep on file accurate and current contact information for these children, their parents or guardians and witnesses. It is recommended that a standard form similar to the attached Form at Schedule 4 be used to record this information.
- (5) Each child victim should receive a minimum of two orientation sessions, one before their first court appearance, and another before the trial or other major hearing in the matter. Child witnesses should receive orientation before the day they are required to give evidence.
- (6) Child victims and child witnesses should be reminded that they are not to wear their school uniform to court. To do so could provide a means through which persons can identify them.
- (7) Each child victim should receive trial orientation not less than 48 hours before the trial or other substantive

hearing. Trial orientation is to be done in child and age-appropriate language and should include:

- (a) Explanation of the role and function of the judge, the defendant, the complainant, the attorneys-at-law, jury, witnesses and court staff.
- (b) Explanation of the trial process from the beginning to the end including, the plea, selection of the jury, the giving of evidence with special emphasis on cross-examination, the Judge's summing up, retirement of the jury and the verdict.
- (c) Giving the child an opportunity to refresh his/her memory from police statements and/or depositions and from any video recorded interview of the child in keeping with any authorised procedure.
- (d) Giving the child an opportunity to ask questions and to have them answered.

36. Guidelines for the Prosecutor

- (1) It is the responsibility of the prosecutor in cases involving child victims and child Crown witnesses to collect, and keep on file accurate and current contact information for these children and their parents or guardians. It is recommended that a standard form similar to Form 2 be used for this purpose. Once completed, this form is to be placed on the file and amended when there is a change in the contact information.

- (2) Prosecutors should conduct themselves in a manner that encourages a child victim or a child Crown witness to place his/her confidence in them. Prosecutors ought to be sensitive to the psychological state of the child and any particular fragilities that may be affecting the child's ability to give evidence.
- (3) It is the responsibility of the prosecutor to make contact with the Victim Support Unit for an orientation session to be scheduled with a child victim/witness. The prosecutor should do this at least 30 days before the trial or hearing. The Victim Support Unit and the prosecutor should be sensitive to the particular child's schedule (especially where the child is in school) and set the orientation for a time which is convenient and least disruptive to the child's schedule. The Victim Support Unit should lead in making the arrangements for the orientation which includes contacting the child victim/witness and his/her parents or guardians.
- (4) Prosecutors should conduct themselves in a manner which assists with expediting the hearing/trial and when settling their diaries should give priority to cases involving child victims, child witnesses and child defendants. Criminal case management best practices should be observed in this regard.
- (5) The Prosecutor should contribute to the familiarization of child victims and child Crown witnesses with the court environment, personnel, procedures and proceedings by explaining and making themselves available to the children for them to ask questions and receive answers.



37. Orientation - Child Victims and Witnesses in State Custody

It is the responsibility of each agency at least 24 hours before a child's first appearance in court to provide the child victims and child witnesses in its custody with general orientation about their first appearance in court. These Guidelines recommend that the Victim Support Unit should take the lead in executing this process using a multi-agency approach. These Guidelines assume that there will be children in care who are either victims or witnesses.

C. COURT APPEARANCES AND HEARINGS

Guidelines for Police/VSU/Prosecutor

38. Child victims and witnesses, their parents or guardians and legal representatives, from their first contact with the court process and throughout that process, should be promptly and adequately informed of the progress of the case, including the arrest and custodial status of the accused and changes to that status, prosecutorial decision in relation to the manner in which the case is to be handled, post-trial developments and the outcomes of the case.
39. Child victims and witnesses should have safe passage to court and should not find themselves in the press of a crowd that may include the defendant and/or his supporters. Child victims and child witnesses should have access to a safe and comfortable room in the premises of the court until they are required to give evidence or otherwise participate in court proceedings.

This particular guideline envisages a multi-agency approach which may include the police, VSU, Prosecutor and Court



Administration for its effective implementation. Often times, for instance, there may be an unused courtroom or some other space within the court building which may be identified as a suitable waiting area for a child victim or witness if there is no room that is officially designated as a child witness room.

40. Police Officers and other court officials should refrain from shouting the names of the children when the court is ready to hear their matter(s). Some other suitable means of summoning them into the court should be identified and implemented.
41. Child victims, child defendants and child witnesses should not wear school uniforms to court. Both the child and his/her parents or guardians should be advised of this prior to the court date by the police, the prosecutor and/or the VSU.

42. Guidelines for Judges

- (1) Wherever possible, the court should schedule children's appearances in court in a way that is compatible with the child's normal school schedule; priority should be given to cases involving children so that they are heard first, at the beginning of the session or where possible during a school holiday. The lawyers in the case should alert the court where the case involves a child defendant or child victim/witness. Plea and Case Management Hearings in the criminal jurisdiction should be used to highlight and address these issues.
- (2) The court should give priority to cases involving child victims, over other pending cases on the court sheet.

- (3) The court should enquire of a child if he/she has received orientation as set out in this Part. Where the child has not received any orientation the court should adjourn or have the hearing stood down to allow for orientation to take place. The court may consider making orientation a requirement before taking the evidence of a child victim, child witness or a child defendant.
- (4) The Court should be particularly mindful of the child victim's right to participate and to express his or her views, opinions and beliefs freely, in the child's own words, and to contribute to the decisions affecting his/her life, including those taken in any judicial proceedings and to have those views considered with due regard for the child's abilities, age, intellectual maturity and evolving capacity.
- (5) The parent or guardian of the child victim is entitled to participate in the proceedings and may be required by the court to attend in the interest of the child. The court may however deny them participation if it is shown that their exclusion is in the child's best interest.
- (6) The court is encouraged to excuse the child victim and may give the child defendant the option of not attending sittings of the court which are administrative. On these occasions it is highly recommended that the court requires only the parents or guardians of the children to attend those sittings; however, notwithstanding, the child defendant may choose to attend all of the sittings, including the optional ones.

- (7) Where a child victim or child defendant is being taken before the court for the first time consideration should be given to having the matter listed for the afternoon session of the court and for those matters to be dealt with in Chambers.
- (8) Child victims and witnesses should have safe passage to court and should not find themselves in the press of a crowd that may include the defendant and/or his supporters. Child victims and child witnesses should have access to a safe and comfortable room in the premises of the court until they are required to give evidence or otherwise participate in court proceedings.

43. Questioning of Witnesses

- (1) The examination (chief, cross and re-examination) of child victims, child witnesses and child defendants should be carried out in a manner which, for example, is not aggressive, hostile, disrespectful, impolite or oppressive. The court should closely monitor the examination, and in particular cross-examination, of child victims, child witnesses and child defendants to ensure that the language used is age appropriate and in order to protect them from undue harassment or intimidation.
- (2) Given that the attention span of children is generally limited, the court may issue directions about the duration of a child's (victim, witness or defendant) testimony. His or her appearance in the witness box may be interrupted by reasonable breaks granted by the court in its own discretion or upon the request of the child, by his or her support person or by one of the attorneys-at-law in the case.

- (3) The court should monitor the demeanor of the child during the giving of evidence to ensure that the child is not unduly tired, distressed or otherwise suffering undue discomfort.
- (4) The court should guard against and prevent the intimidation, harassment or the confusion of child witnesses including victims and defendants by lawyers through methods, including (a) asking irrelevant questions; (b) confusing the child with repetitive and/or rapid questioning, repeated interruptions to responses or by demanding unrealistically specific times and details; (c) shouting at the child; (d) using age inappropriate language and terms which may affect the child's ability to understand the questions being put to her/him.

PART FOUR



Part Four

Children In Need Of Care And Protection/ Children With Behavioural Challenges

44. Initial Contact and Assessment

Every child in need of care and protection and those who are reported as having a behavioural challenge should go through a standard psycho-social assessment process and a determination made as to the nature of the intervention required. The assessment tool should be administered by a behavioural specialist who should communicate the findings, orally and/or in writing, the type of treatment or other support needed to all relevant persons.

45. Police Guidelines

(see CCPA, §. 11-13 as per Schedule 8 and 8(i))

- (1) Where the child is brought to a police station or where a child is taken into custody by the police, the police should immediately assess if the child is in need of medical attention. If medical attention is needed then the child is to be taken, without delay, to the nearest health facility overseen by a medical health professional.
- (2) The child brought to or taken into custody by the police who does not need medical attention should be taken to a private, comfortable and child-friendly room/place to be interviewed by a child specialist police.

If the child appears to be in need of care and protection, the child specialist police should report the matter to the CPFSA.

- (3) The police should immediately take children who appear to be in need of care and protection to a Place of Safety; the police should not keep these children in their custody. Children detained at a Place of Safety should be taken before a Children's Court or if there is no court which has been officially designated as a "Children's Court", before any Parish Court Judge whether in open court or in Chambers within 48 hours of being so detained. [see § 11 (2) and 12 of the CCPA appended in Schedule 7].

If for whatever reason, the child who appears to be in need of care and protection cannot be detained forthwith in a Place of Safety and has to remain in police custody, the police must provide a written account of the reason for the non-compliance. The child should be taken before a Children's Court or Parish Court Judge whether in open court or in Chambers within the 48 hour period of being detained at the police station.

- (4) Children reported as having a behavioural challenge should be separated from those who are deemed to be in need of care and protection.
- (5) Children reported as having a behavioural challenge are not to be seen as having committed an offence. They are to be assessed by a behavioural specialist so that a determination can be made as to whether they in fact have a behavioural challenge and if so, what treatment and other support is necessary.

46. Court Guidelines

- (6) A child reported as having a behavioural challenge should receive without delay, a referral to receive psycho-social intervention. The court seized of the matter should delay any decision that it may make until it has had the benefit of a report from a qualified mental health/behavioural specialist about the child.

47. Records

- (1) Records of children shall be kept strictly confidential and closed to third parties. Access to these records shall be limited to persons directly concerned with the care, custody and protection of the child.

- (2) All reports, records and other documents pertaining to a child should be placed in a confidential file which should be kept up to date, accessible only to persons authorized and arranged in such a way as to be easily understood. This should promote consistency in the care of the child, if the child is transferred from one facility to another or to another environment.
- (3) A child who is taken to a Place of Safety or Children's Home should have administered, without delay, the standard assessment tool by the competent authority.

48. 24HR Reporting Hotlines, Information Keeping and Sharing

- (1) The Children's Registry should provide several 24hr Hotlines across Jamaica to receive complaints/reports and to link emergency services. These hotlines are at all times to be made available to the public and to child justice professionals and relevant public agencies.
- (2) Where an agency other than the Children's Registry is the first point of report, it should complete a standard intake form and transmit that form electronically to the Children's Registry within 24 hours of the report.
- (3) The OCA and the CPFSA (including the Children's Registry) should have and operate a seamless information database with access points as authorized. The transmission of information between the agencies should employ the latest technology and security protocols thus enabling the status of cases involving children being ascertained without delay.

49. Admissions, Registration, Movement and Transfer

- (1) In every place where children are detained or on a correctional order a complete and secure record of the following information should be kept concerning each child received in such an institution:
 - (a) Information on the child's identity;
 - (b) The fact of and reasons for commitment and the authority therefore;
 - (c) The date and time of admission into the facility;
 - (d) The date and time of transfer into or out of the facility, as the case may be;
 - (e) The date and time of release from the facility;
 - (f) Details of the notifications to parents and guardians on every admission, transfer or release of the child in their care;
 - (g) Details of known physical and mental health problems, including substance abuse;
 - (h) All interventions made by a relevant authority in whose care the child has been. The details of these interventions are to be documented along with notes that make the continuity of care as least disruptive as possible.



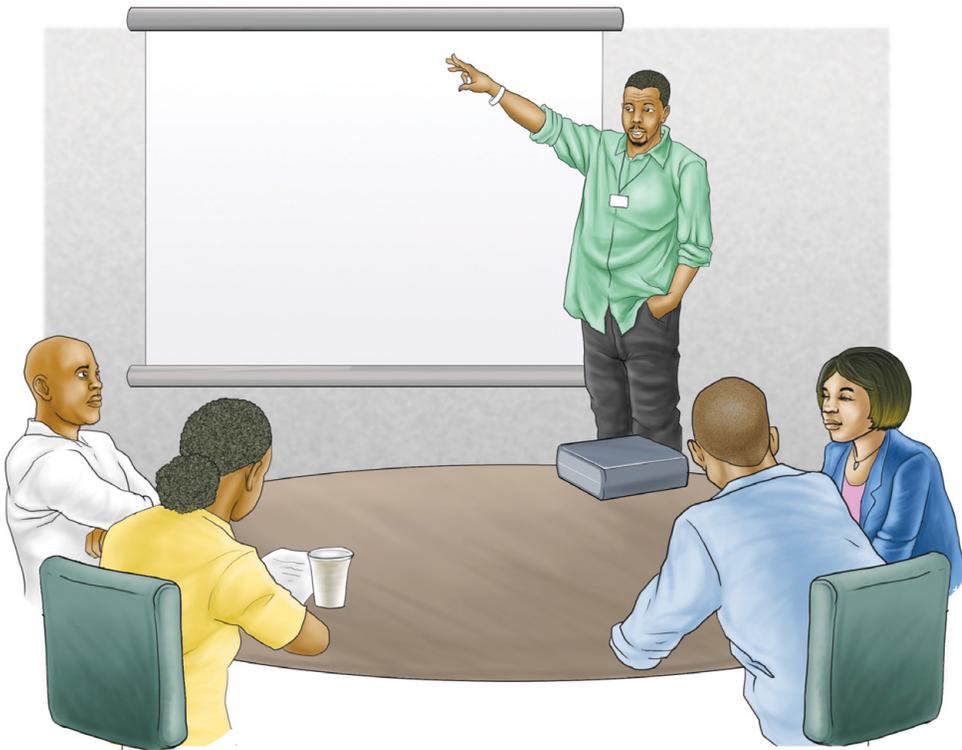
Any special needs that exist in relation to a child's case must be highlighted so that at all times the child may receive the appropriate care even where there is a change in the institution with custody and care of that child.

- (2) Information on admission, transfer and release should be provided without delay to the parents or guardians or where appropriate to the closest relative of the child concerned so long as such communication is in keeping with the best interests of the child.
- (3) Records of children should be kept strictly confidential and closed to third parties. Access to those records shall be limited to persons directly concerned with the care, custody and protection of the child.
- (4) All reports, records and other documents pertaining to a child should be kept confidential and placed in a specific file which is to be kept up to date, accessible only to persons authorized and arranged in such a way as to be easily understood.
- (5) Children should not be arbitrarily transferred from one facility to another. If a transfer is necessary, the child should be informed prior to the transfer and whenever possible the child should be allowed to have an input in the decision. Contact is also to be made with his/her parents or guardians prior to the transfer of that child.



A written indication explaining the basis for the transfer should be noted on the child's file. As a general rule, information relating to a child should accompany a child when s/he is being placed in the custody and care of another agency.

PART FIVE





Part Five

Training, Specialization And Professional Development

50. Professional education, in-service training, refresher courses and other appropriate modes of instruction and training should be utilized to establish and maintain the necessary professional competence of all personnel dealing with child justice matters. Each department/agency should ensure that the necessary resources are identified to enable compliance with this guideline.
51. In order to fulfil their functions, police officers who frequently or exclusively deal with children or who are primarily engaged in the prevention, investigation and detection of juvenile crime and crimes against children should be specially instructed and trained. A necessary component should include the exposure to the rights of the child and best practices in this area.
52. The heads of the relevant State agencies that deliver services to children should take steps to ensure that members of staff are informed about these Guidelines and that appropriate training sessions are organized concerning the use and applicability of these Guidelines.
53. These Guidelines are to be the subject of training workshops and seminars for parents, guardians, law enforcement agents and all professionals/individuals who deliver service to children who interface with the justice system at varying levels.

54. Each Ministry, Department or Agency is to take specific responsibility for executing these Guidelines.



ACRONYMS

CCPA:	Child Care and Protection Act
CISOCA:	Centre for the Investigation of Sexual Offences and Child Abuse
CPFSA:	Child Protection and Family Services Agency
CR:	Children's Registry
OCA:	Office of The Children's Advocate
UNCRC:	United Nations Convention on the Rights of the Child
VSU:	Victim Support Unit

Schedules 1 - 9



Schedule 1

The Child Care And Protection Act, 2004

8.—(1) For the purposes of this Act a child shall be considered to be in need of care and protection if that child—

Circumstances in which a child is in need of care and protection.

- (a) having no parent or guardian, or having a parent or guardian unfit to exercise care and guardianship, or not exercising proper care and guardianship, is falling into bad associations, exposed to moral danger, or beyond control;
- (b) is being cared for in circumstances in which the child's physical or mental health or emotional state is being seriously impaired or there is a substantial risk that it will be seriously impaired;
- (c) is a child in respect of whom any offence mentioned in the Second Schedule has been committed or attempted to be committed;
- (d) is a member of the same household as a child in respect of whom such an offence has been committed; or
- (e) is a member of the same household as a person who has been convicted of such an offence in respect of a child.

Second
Schedule.

(2) For the purposes of subsection (1), the fact that a child is found—

- (a) destitute;
- (b) wandering without any settled place of abode and without visible means of subsistence;
- (c) begging or receiving alms or loitering for that purpose, shall, without prejudice to the generality of the provisions of subsection 1 (a), be evidence that the child is exposed to moral danger.

Schedule 2

The Child Care And Protection (Amendment) Act, 2023

2 [No.] *The Child Care and Protection (Amendment) Act, 2023*

Amendment of
section 8 of
principal Act.

2. Section 8(1) of the principal Act is amended by—

- (a) deleting from paragraph (a) the words “, exposed to moral danger or beyond control” and substituting therefor the words “or is exposed to moral danger”;
- (b) deleting the word “or” at the end of paragraph (d);
- (c) deleting the full-stop at the end of paragraph (e) and substituting therefor the word “; or”; and
- (d) inserting the following as paragraph (f)—
“(f) is a child with behavioural challenges.”.

Schedule 3

The Bail Act, 2023

3.—(1) This Act applies to the grant of bail to a defendant. Application.

(2) The question of bail where the defendant is a child shall, unless otherwise provided in any other Act, be determined by a Children's Court in accordance with this Act, so, however, that in any case where bail is denied, any order made by the Court for the child to be kept in custody shall be in accordance with the Child Care and Protection Act.

(3) Subject to subsection (4), where a parent or guardian of a child consents to be surety for the child for the purposes of this section, that parent or guardian shall be required to ensure that the child complies with all conditions that are imposed on the child for the grant of bail.

(4) Subsection (3) shall not apply in any case where it appears that the child will attain the age of eighteen years before the time appointed for the child to surrender to custody, unless the child is unmarried and is dependent on that parent or guardian for maintenance by reason of—

- (a) physical or mental infirmity or disability; or
- (b) by virtue of an order for maintenance remaining in force after the child attains the age of eighteen years, under section 16(3) of the Maintenance Act.

4. Subject to the provisions of this Act, a defendant is entitled to be granted bail by a deciding official pursuant to a power to grant bail conferred on that deciding official under this Act or any other law. Entitlement to bail.

Schedule 4

The Child Care And Protection Act, 2004

Bail or
detention of
child.

67.—(1) Where a person who is apparently a child is apprehended, with or without warrant, and cannot be brought forthwith before a court, the officer or sub-officer of police in charge of the police station to which the person is brought shall act in accordance with subsection (2).

(2) The Officer or sub-officer shall—

- (a) so inform the government agency responsible for the care and protection of children; and
- (b) enquire into the case and may, in accordance with the Bail Act, release the person on a recognizance being entered

into by the person or his parent or guardian (with or without sureties) for such amount as will, in the opinion of the officer or sub-officer, secure the person's attendance upon the hearing of the charge, and shall so release that person unless—

- (i) the charge is one of murder or other grave crime; or
- (ii) it is necessary in the person's interest to remove the person from association with any reputed criminal or prostitute; or
- (iii) the officer or sub-officer has reason to believe that the person's release would defeat the ends of justice.

(3) Where a person apparently a child is apprehended and is not released under subsection (2), the agency responsible for the care and protection of children shall cause the person to be detained in a juvenile remand centre until the person can be brought before a court.



Schedule 5

Child Contact Information Form

Full Name/Age	
Home Address	
Email/Phone	
School	
Name of Parent #1	
Phone Parent #1	
Email Parent #1	
Home Address	
Work Address	
Name of Parent #1	
Phone Parent #1	
Email Parent #1	
Home Address	
Work Address	
Close Relative	
Phone	
Email	
Home Address	
Work Address	

Schedule 7

Medical Certificate

4882A

I HEREBY CERTIFY:—

(1) That I have examined.....20

This is the Medical Certificate referred to as hereunder annexed and marked 'A' in the sworn statement of Dr.

{ Treatment in Hospitals

Treatment at Dispensary or Out-Patient Department of Hospital

(2) That I advised

That ^{he} _{she} be sent home

(3) That ^{he} _{she} was suffering from the following injuries

(4) That I am of the opinion that these injuries ^{are} _{are not} serious.

(5) That I am of the opinion that the injuries are consistent with infliction by.....

(6) That I am of the opinion that the injuries are ^{likely} _{not likely} to be permanent.

Schedule 7

Medical Certificate (cont d)

4882A

In the Resident Magistrate's Court for the Parish of
Holden at

THE QUEEN against

I,

1. I am a Medical Practitioner and

For

make Oath and state that—

Medical Officer for the Medical District of

in the parish of

2. The particulars contained in the Medical Certificate herewith annexed marked "A," bearing my signature touching the Medical Examination performed by me on _____ day of _____ 20 _____, are true and correct on the _____ on the _____

to the best of my information, knowledge and belief.

Medical Practitioner

Sworn to before me this

20

day of

J.P.

TAKE NOTICE—That pursuant to the provisions of section 51 (1) of the Medical Evidence Law Chapter 118, the prosecution intends to put in evidence a Medical Certificate (a copy of which appears on the reverse side hereof) touching the Medical Examination performed on _____

by

Medical Practitioner on the

day of

20

Dated this

day of

20

To:

Deputy Clerk Courts

N.B.—At the commencement of the proceedings you may object to the admission of the Certificate and may require the attendance of the Medical Practitioner to give evidence on Oath.

Served personally on the Accused

this

day of

20

Schedule 8

The Child Care And Protection Act, 2004

11.—(1) If it appears to a Justice of the Peace on information on oath laid by any person who, in the opinion of the Justice of the Peace is acting in the interests of a child that there is reasonable cause to suspect—

Warrant to search for and remove child.

- (a) that the child has been or is being assaulted, ill-treated or neglected in a manner likely to cause that child unnecessary suffering; or
- (b) that any offence mentioned in the Second Schedule has been, is being or is likely to be committed in respect of the child, the Justice of the Peace may act in accordance with subsection (2) or (3).

Second Schedule.

Schedule 8

The Child Care And Protection Act, 2004 (cont d)

(2) The Justice of the Peace may issue a warrant—

(a) authorizing any constable—

- (i) to search for the child and, if it is found that the child has been, is being or is likely to be assaulted, ill-treated or neglected in any such manner, or that any such offence has been or is being committed in respect of the child, to remove the child to and detain the child in a place of safety; or
- (ii) to remove the child with or without search to a place of safety and to detain the child there,

and bring the child before a Children's Court or, if there is no Children's Court sitting in that parish, before a Resident Magistrate in chambers, within forty-eight hours after such removal; or

(b) causing any person accused of any offence mentioned in subsection (1) in respect of the child to be apprehended and brought before a court of summary jurisdiction in order that proceedings may be taken

(3) Instead of authorizing the removal of a child under subsection (2), the Justice of the Peace may make an order prohibiting any person accused of any offence mentioned in subsection (1) in respect of the child from—

- (a) entering or remaining in the household residence where the child resides; or
- (b) following or waylaying the child in any place, until such time as the child is brought before the court.

(4) A copy of an order made under subsection (3) shall be served personally on the person accused of the offence, who may apply immediately to the Justice of the Peace for the order to be discharged.

Schedule 8

The Child Care And Protection Act, 2004 (cont d)

(5) In determining whether to discharge the order, the Justice of the Peace shall have regard to the matters referred to in subsection (1).

(6) Any constable authorized by warrant under this section to search for any child, or to remove any child with or without search, may enter (if need be by force) any house, building or other place specified in the warrant and may remove the child therefrom.

(7) The constable executing any warrant issued under this section may be accompanied by the person laying the information, if that person so desires, and may also, if the Justice of the Peace by whom the warrant is issued so directs, be accompanied by a duly qualified medical practitioner.

(8) It shall not be necessary in any information or warrant under this section to name the child.

12.— (1) A constable, a children's officer or a probation and after-care officer may take to a place of safety any child in respect of whom any of the offences mentioned in the Second Schedule has been committed, or there is reason to believe has been committed, or who is, in accordance with the provisions of section 13, about to be brought before a Children's Court.

Detention of
child in
place of
safety.
Second
Schedule.

(2) Any child taken to a place of safety under this section, or any child who seeks refuge in a place of safety, shall not be detained there for longer than forty-eight hours without having been brought before a Children's Court or, if there is no Children's Court sitting in that parish, a Resident Magistrate in chambers.

Schedule 8

The Child Care And Protection Act, 2004 (cont d)

13.—(1) Any constable or authorized person may bring before a Children’s Court any child in need of care or protection.

Power to
bring child
needing care
or
protection
before
court.

(2) For the purposes of this section the expression—
“authorized person” means—

- (a)** any probation and after-care officer or any children’s officer;
- (b)** any person appointed by the Minister under section 87, including any person appointed by the Minister on the recommendation of a welfare organization.

Schedule 8 (i)

The Child Care and Protection (Amendment) Act, 2023

Amendment of
section 13 of
principal Act.

3.—(1) Section 13 of the principal Act is amended by deleting subsection (1) and substituting therefor the following—

“ (1) Any of the following persons may bring before a Children’s Court any child in need of care and protection—

- (a) a constable;
- (b) an authorized person;
- (c) in the case of a child brought before the Court on the ground that the child is a child with behavioural challenges, any person referred to in paragraph (a) or (b) or, pursuant to subsection (4), the government agency responsible for children.”.

(2) Section 13 of the principal Act is amended by inserting next after subsection (2) the following subsections—

“ (3) Where a parent or guardian of a child alleges that the child has behavioural challenges, that parent or guardian may make an application, to the Government agency responsible for children, for the child to be assessed by a person having the qualifications and competency as a behavioural specialist to determine whether the child is in fact exhibiting behavioural challenges and the type of treatment or other support needed in respect thereof.

(4) On an application under subsection (3), the Government agency responsible for children shall cause the assessment to be

Schedule 8 (i)

The Child Care and Protection (Amendment) Act, 2023

The Child Care and Protection (Amendment) Act, 2023 [No.]

made and, in a case where the assessment determines that the child—

- (a) should be treated for behavioural challenges of a nature that requires the child to reside at a facility equipped to provide such treatment, the Government agency responsible for children shall bring the child before the Court to be dealt with in accordance with this Part on the ground that the child has behavioural challenges; or
- (b) should be treated for behavioural challenges of a nature that do not require the child to reside at a facility equipped to provide such treatment, the Government agency responsible for children shall—
 - (i) issue to the parent or guardian (as the case may be) a care plan, in respect of the child, that provides the details as to the period for which, and the time and place of which, the child should attend for the treatment; and
 - (ii) in any case where it comes to the attention of the Government agency responsible for children that the child is not receiving treatment in accordance with the care plan, that agency shall bring the child before the Court and the Court shall make any order that the Court is able to make under this Part and that the Court considers fit to resolve the matter in the best interests of the child.

(5) Where the Government agency responsible for children brings a child before the Court under subsection (4), that agency shall submit the following information in respect of the child to the Court—

- (a) a social enquiry report;
- (b) a copy of the report of the behavioural specialist on the assessment made under subsection (3);

Schedule 8 (i)

The Child Care and Protection (Amendment) Act, 2023

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- (c) a care plan; and
- (d) the Government agency responsible for children's recommendations as to the period for which the treatment is required, which (subject to section 14(3)(b)) should not exceed one year.”

Schedule 9

Addendum Outlining The Multi-Agency Approach and its Link to the Child Diversion Act

In 2008, the British High Commission in Jamaica spearheaded and sponsored a wide-ranging review and audit of child protection procedures in relation to the initial disclosure of sexual abuse, the investigation, as well as the prosecution and trial of such cases.

In a bid to reduce the trauma experienced by child abuse victims by virtue of exposure to the criminal justice system, the child protection programme was launched. This programme employed the use of a multi-agency approach by child protection agencies (both Government and non-Government) and aimed to improve the effectiveness of the investigation and prosecution of child sexual abuse cases. Additionally, the programme sought to divert carefully selected cases of carnal abuse (the name of the offence at that time) away from the criminal justice system where appropriate and only if they involved sexual activities between children that did not involve any violence or coercion by either party. These children would then be referred to receive counselling support. The programme, as it then was, was not a codified one and operated based on mutual cooperation. It however created a firm foundation for the Child Diversion Act which eventually was passed into Jamaican law in 2018.

The Child Diversion Act, has provided a statutory framework which allows children to be diverted away from the traditional criminal justice responses for certain scheduled offences. This has introduced more certainty and has broadened the types of cases for which children can benefit from diversion. Of equal significance, is that children can be diverted at several different stages throughout the process – See the Child Diversion Act, 2018.



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