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Notes:	Criminal Appeal (Amendment and Misc. Provisions Act, 2009-12 and Juvenile Offenders Rules 1933 (103/1933) attached.

CHAPTER 138

JUVENILE OFFENDERS

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CHAPTER 138
JUVENILE OFFENDERS

1932-8. 1945-4. 1956-16. 1956-56. 1956-57. L.N. 168/ 1467 1989-26. 1994-18, 1998-50.

An Act to amend and consolidate the law relating to proceedings concerning juvenile offenders.

Commencement

[1st September, 1932]

Short title

1. This Act may be cited as the Juvenile Offenders Act.

PART I

Preliminary

Interpretation

2. For the purposes of this Act, the expression

"child" means a person under the age of 14 years;

"guardian", in relation to a child or young person, includes any person who, in the opinion of the court having cognisance of any case in relation to the child or young person or in which the child or young person is concerned, has for the time being the charge of or control over the child or young person;

"juvenile court" means a court of summary jurisdiction sitting in the manner prescribed by section 3(1) to hear charges against children or young persons;

"young person" means a person who is 14 years of age or upwards and under the age of 16 years.

PART II

Juvenile Courts

Juvenile courts 1956 - 56

3. (1) A court of summary jurisdiction when hearing charges against children or young persons shall, unless the child or young

person is charged jointly with any other person, not being a child or young person, sit either in a different building or room from that in which the ordinary sittings of the court are held or on different days or at different times from those at which the ordinary sittings are held.

(2) Where in the course of any proceedings in a juvenile court it appears to the court that the person charged or to whom the proceedings relate is of the age of 16 years or upwards or where in the course of any proceedings in any court other than a juvenile court it appears that the person charged or to whom the proceedings relate is under the age of 16 years, nothing in this section shall be construed as preventing the court, if it thinks it undesirable to adjourn the case, from proceeding with the hearing and determination of the case.

(3) Provision shall be made for preventing persons apparently under the age of 16 years, whilst being conveyed to or from court or whilst waiting before or after their attendance in court, from association with adults charged with or convicted of any offence other than an offence with which the person apparently under the age of 16 years is jointly charged or convicted.

(4) Subject to subsection (5), in a juvenile court no person, other than the members and officers of the court and the parties to the case, their attorneys-at-law and other persons directly concerned in the case, shall, except by leave of the court, be allowed to attend.

(5) Bona fide representatives of a newspaper or news agency shall not be excluded from a juvenile court in pursuance of subsection (4) except by special order of the court.

(6) No person shall publish the name, address, school, photograph or anything likely to lead to the identification of the child or young person before the juvenile court, save with the permission of the court or in so far as required by this Act.

(7) Any person who acts in contravention of subsection (6) shall be liable on summary conviction to a fine of \$96.

PART III

Bail and Remand of Children and Young Persons

Bail of children and young persons arrested. 1956-16.

4. (1) Where a person apparently under the age of 16 years is apprehended with or without warrant and cannot be brought forthwith before a juvenile court, any officer of police not below the rank of sergeant or the officer in charge of the police station to whom such person is brought shall enquire into the case and may in any case, and

- (a) unless the charge is one of homicide or other grave crime; or
- (b) unless it is necessary in the interest of such person to remove him from association with any undesirable person; or
- (c) unless the officer has reason to believe that the release of such person would defeat the ends of justice,

shall release such person on a recognisance, with or without sureties being entered into by him or by his parent or guardian or other responsible person for such amount as will, in the opinion of the officer, secure the attendance of such person upon the hearing of the charge.

1956-16.

(2) Where a person apparently under the age of 16 years, having been apprehended, is not released under subsection (1), the officer of police shall cause him to be detained at a Reformatory and Industrial School until he can be brought before a juvenile court, unless the officer certifies

- (a) that it is impracticable to do so; or
- (b) that he is of so unruly a character that he cannot safely be so detained; or
- (c) that by reason of his state of health or of his mental condition it is inadvisable so to detain him

and the certificate shall be produced to the court before which he is brought.

Association with adults during remand.

5. It shall be the duty of the Commissioner of Police to make arrangements for preventing, so far as practicable, a child or young person, while being detained, from associating with an adult, other than a relative, charged with an offence.

Remand or committal to custody in place of detention.

6. (1) Subject to subsection (2), a court, on committing for trial a child or young person who is not released on bail, shall, instead of committing him to prison, commit him to custody at a Reformatory and Industrial School to be named in the commitment, to be there detained until he is thence delivered in due course of law.

(2) It shall not be obligatory on the court to commit a young person under subsection (1) if the court certifies that he is of so unruly a character that he cannot safely be so committed or that he is of so depraved a character that he is not a fit person to be so detained.

(3) A commitment under this section may be varied or, in the case of a young person who proves to be of so unruly a character that he cannot be safely detained in such custody or to be of so depraved a character that he is not a fit person to be so detained, revoked by any court acting in or for the place in or for which the court which made the order acted and where it is revoked the young person may be committed to prison.

PART IV*Proceedings in Juvenile Courts***Age of criminal responsibility 1998-50.**

7. Sections 8 and 9 shall not render punishable for an offence any child who is not, in the opinion of the court, above the age of 11 years and of sufficient capacity to commit crime.

Procedure in juvenile courts: proof of offence.

8. (1) Where a child or young person is brought before a juvenile court for any offence, it shall be the duty of the court as soon as possible to explain to him in simple language the substance of the alleged offence.

(2) Where a child is brought before a juvenile court for any offence other than homicide, the case shall be finally disposed of in such court, and it shall not be necessary to ask the parent whether he consents that the child be dealt with in the juvenile court.

(3) Where a young person is brought before a juvenile court for an indictable offence other than homicide, and the court becomes satisfied at any time during the hearing of

the case that it is expedient to deal with it summarily, the court shall put to the young person the following or a similar question, telling him that he may consult his parent or guardian before replying-

"Do you wish to be tried by this court or by a jury? "

and the court shall explain to the young person and to his parent or guardian the meaning of being so tried and the place where the trial would be held.

(4) After explaining the substance of the alleged offence, the court shall ask the child or young person (except in cases where the young person does not wish to be tried in the juvenile court) whether he admits the offence.

(5) Where the child or young person does not admit the offence, the court shall then hear the evidence of the witnesses in support thereof.

(6) At the close of the evidence-in-chief of each such witness, the court shall ask the child or young person or, if it sees fit, the child's parent or guardian, whether he wishes to put any questions to the witness.

(7) If the child or young person instead of asking questions wishes to make a statement he shall be allowed to do so and the court may put to the child or young person such questions as may be necessary to explain anything in the statement of the child or young person.

(8) It shall be the duty of the court to put to the witnesses such questions as appear to be necessary.

Procedure in juvenile courts: making of orders.

(9) Where it appears to the court that a _prima facie case is made out, the evidence of any witnesses for the defence shall be heard and the child or young person shall be allowed to give evidence or to make any statement.

9. (1) Where the child or young person admits the offence or the court is satisfied that it is proved, he shall then be asked if he desires to say anything in extenuation or mitigation of the penalty or otherwise.

(2) Before deciding how to deal with him, the court shall obtain such information as to his general conduct, home

surroundings, school record and medical history, as may enable it to deal with the case in the best interests of the child or young person and may put to him any question arising out of such information.

(3) For the purpose of obtaining such information or for special medical examination or observation the court may from time to time remand the child or young person on bail or in custody.

(4) Where the child or young person admits the offence or the court is satisfied that it is proved and the court decides that a remand is necessary for purposes of enquiry or observation, the court may cause an entry to be made in the court register that the charge is proved and that the child or young person has been remanded.

(5) The court before which a child or young person so remanded is brought may, without further proof of the commission of the offence, make any order in respect of the child or young person which could have been made by the court which so remanded the child or young person.

Cap. 116

(6) Any child or young person charged with an indictable offence and tried by a juvenile court under section 8 may, in lieu of or in addition to any other punishment be sentenced to pay a fine of forty-eight dollars or, if a young person, to imprisonment for three months and, if the child or young person is a male, the court may in its discretion, either in lieu of or in addition to any other punishment, order such child or young person to be privately whipped under section 62 of the Magistrates Jurisdiction and Procedure Act.

(7) Where a child or young person is charged with any offence, other than homicide, and the court is satisfied that the charge is proved, the court, without proceeding to the conviction of the offender; may reprimand and discharge the offender or may make an order discharging the offender conditionally on his entering into a recognisance, with or without sureties, to be of good behaviour and to appear for conviction and sentence when called upon at any time during such period, not exceeding three years, as may be specified in the order.

(8) An order made under subsection (7) shall, for the purpose of revesting or restoring stolen property and of enabling the court to make orders as to the restitution or delivery of property to the owner and as to the payment of money upon or in connection with such restitution or delivery, have the like effect as a conviction.

Failing to observe conditions of recognisance.

10. (1) Where the court before which an offender is bound by his recognisance under this Act to appear for conviction or sentence or any court is satisfied by information on oath that the offender has failed to observe any of the conditions of his recognisance, it may issue a warrant for his apprehension or may, if it thinks fit, instead of issuing a warrant in the first instance, issue a summons to the offender and his sureties, if any, requiring him or them to attend at such court and at such time as may be specified in the summons.

(2) The offender, when apprehended, shall, if not brought forthwith before the court before which he is bound by his recognisance to appear for conviction or sentence, be brought before a court.

(3) The court before which an offender on apprehension is brought or before which he appears in pursuance of summons issued in pursuance of subsection (1) may, if it is not the court before which he is bound by his recognisance to appear for conviction or sentence, remand him to custody or on bail until he can be brought before the last-mentioned court.

(4) A court before which a person is bound by his recognisance to appear for conviction and sentence, on being satisfied that he has failed to observe any condition of his recognisance, may forthwith, without any further proof of his guilt, deal with him as for the original offence.

PART V

Parents and Guardians of Juvenile Offenders

Attendance at court of parent of child or young person charged with an offence, etc. 1956-57.

11. Where a child or young person is arrested or charged with an offence, a summons or warrant may be issued by a magistrate to enforce the attendance of a parent or guardian for the purpose of enabling him to take part in the proceedings

Cap. 116

and enabling orders to be made against him, in the same manner as if an information were laid or complaint made upon which a summons or warrant could be issued against a defendant under the Magistrates Jurisdiction and Procedure Act; and a summons to the child or young person may include a summons to the parent or guardian to enforce his attendance for the said purpose.

Power to order parent to pay fine, etc., instead of child or young person

12. (1) Where a child or young person is charged before any court with any offence for the commission of which a fine, damages or costs may be imposed and the court is of opinion that the case would be best met by the imposition of a fine, damages or costs, whether with or without any other punishment, the court may, in any case, and shall, if the offender is a child, order that the fine, damages or costs awarded be paid by the parent or guardian of the child or young person instead of by the child or young person, unless the court is satisfied that the parent or guardian cannot be found or that he has not conduced to the commission of the offence by neglecting to exercise due care of the child or young person.

(2) Where a child or young person is charged with any offence, the court may order his parent or guardian to give security for his good behaviour.

(3) Where a court thinks that a charge against a child or young person is proved, the court may make an order on the parent or guardian under this section for the payment of damages or costs or requiring him to give security for good behaviour, without proceeding to the conviction of the child or young person.

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

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

1956-57. Cap. 116.

(6) A parent or guardian may appeal against an order under this section, if made by a magistrate in accordance with the Magistrate Jurisdiction and Procedure Act.

PART VI*Restrictions upon Sentences upon Children and Young Persons***Imprisonment of children and young persons.**

13. (1) No child shall be sentenced to imprisonment.

(2) No young person shall be sentenced to imprisonment if he can be suitably dealt with in any other way whether by probation, fine, corporal punishment, committal to a Reformatory and Industrial School or otherwise.

(3) A young person sentenced to imprisonment shall not be allowed to associate with adult prisoners.

Abolition of death sentence in case of a person under eighteen. 1989-26.

14. The sentence of death shall not be pronounced on or recorded against a person convicted of an offence if it appears to the court that at the time when the offence was committed he was under the age of 18 years; but in lieu thereof the court shall, notwithstanding anything in this or in any other Act, sentence him to be detained during Her Majesty's pleasure, and if so sentenced, he shall be liable to be detained in such place and under such conditions as the Governor-General may direct and whilst so detained shall be deemed to be in legal custody.

Detention of children or young persons convicted of certain offences. 1994-18.

15. (1) Notwithstanding anything in this Act to the contrary, where a child or young person is convicted of an attempt to murder or of manslaughter or of wounding with intent to do serious bodily harm, the court may sentence the offender to be detained for such period as may be specified in the sentence.

(2) Where such a sentence is passed, the child or young person shall, during that period, notwithstanding anything in this Act, be liable to be detained in such place and on such conditions as the Governor-General may direct and whilst so detained shall be deemed to be in legal custody.

General powers of courts to deal with children and young persons guilty of offences.

16. (1) Where a child or young person charged with any offence is tried by any court and the court is satisfied of his guilt, the court shall take into consideration the manner in which, under the provisions of this or any other Act or otherwise enabling the court to deal with the case, the case should be dealt with, namely, whether

- (a) by reprimanding and discharging the offender; or
- (b) by discharging the offender on his entering into a recognisance; or
- (c) by so discharging the offender and placing him under the supervision of a probation officer; or
- (d) by committing the offender to the care of a relative or other fit person; or
- (e) by sending the offender to a Reformatory and Industrial School; or
- (f) by ordering the offender to be whipped; or
- (g) by ordering the offender to pay a fine, damages or costs; or h) by ordering the parent or guardian of the offender to pay a fine, damages or costs; or
- (i) by ordering the parent or guardian of the offender to give security for his good behaviour; or
- (j) where the offender is a young person, by sentencing him to imprisonment; or
- (k) by dealing with the case in any other manner in which it may be legally dealt with.

(2) Nothing in this section shall be construed as authorising the court to deal with any case in any manner in which it could not deal with the case apart from this section.

PART VII*Miscellaneous***Presumption and determination of age.**

17. Where a person, whether charged with an offence or not, is brought before any court otherwise than for the purpose of giving evidence and it appears to the court that he is a child or young person, the court shall make due enquiry as to the age of that person and for that purpose shall take such evidence

as may be forthcoming at the hearing of the case, and the age presumed or declared by the court to be the age of the person so brought before it shall for the purposes of this Act be deemed to be the true age of that person.

(2) Where it appears to the court that the person so brought before it is of the age of sixteen years-or upwards, that person shall for the purposes of this Act be deemed not to be a child or young person.

(3) An order or judgment of the court shall not be invalidated by any subsequent proof that the age of that person has not been correctly stated to the court.

Rules L.N. 168/1967

18. The Minister may by order make rules for carrying this Act into effect.

Saving

19. Save in so far as other provision is expressly made in this Act, nothing in this Act shall be deemed to affect any other law relating to children or young persons.

CRIMINAL APPEAL (AMENDMENT AND MISCELLANEOUS PROVISIONS) ACT, 2009 - 12

Arrangement of Sections

Section

1. Short title.
2. Amendment of long title of Cap. 113A.
3. Amendment of section 8 of Cap. 113A.
4. Repeal of Part II of Cap. 113A.
5. Amendment to enactments.
6. Commencement.

SCHEDULE

I assent

C. STRAUGHN HUSBANDS

Governor-General

29th May, 2009.

2009 - 12

An Act to amend the Criminal Appeal Act.

Commencement.

(8th June, 2009).

ENACTED by the Parliament of Barbados as follows:

Short title.

1. This Act may be cited as the Criminal Appeal (Amendment and Miscellaneous Provisions) Act, 2009.

Amendment of long title of Cap. 113A.

2. The long title to the Criminal Appeal Act, in this Act referred to as the principal Act, is amended by deleting the words "and to Her Majesty in Council".

CRIMINAL APPEAL (AMENDMENT AND MISCELLANEOUS PROVISIONS) ACT, 2009-12

Amendment of section 8 of Cap. 113A.

3. Section 8 of the principal Act is amended in subsection (1), by deleting paragraph (b) and all the words following thereafter and substituting the following:

"(b) quash the sentence passed at the trial, and shall order him to be detained in a mental hospital during the Court's pleasure

and thereupon the Court may give such directions for the safe keeping of the appellant during the detention as the Courts thinks fit."

Repeal of Part II of Cap. 113A.

4. Part II of the principal Act is repealed.

Amendment to enactments.

5. The enactments set out in Column I of the Schedule are amended to the extent set out opposite thereto in Column 2.

Commencement. Schedule.

6. Sections 2 and 4 of this Act and paragraphs 3 and 4 of the Schedule to this Act shall be deemed to have come into operation on the 14th April, 2005.

CRIMINAL APPEAL (AMENDMENT AND MISCELLANEOUS PROVISIONS) ACT, 2009-12

SCHEDULE

(section 5)

Column 1

Column 2

Enactments

Amendments

1. Mental Health Act, Cap. 45

Delete section 13 and substitute the following:

"Detention in mental hospital. 13. (1) Notwithstanding section 7(1), where a person on trial before the High Court

- (a) is found unfit to plead;
- (b) is found not guilty by reason of insanity; or
- (c) is found guilty but is suffering from diminished responsibility,

that Court shall order him to be detained in a mental hospital during the Court's pleasure and thereupon the Court may give such directions for the safe keeping of the appellant during the detention as the Court thinks fit.

(2) Where the Court has ordered a person to be detained pursuant to subsection (1) and the period of detention served by that person as a result of the Order is in excess of 4 years, the Court

- (a) shall as soon as possible after 4 years of the period of detention has been served, review that sentence and issue further directions: and

CRIMINAL APPEAL (AMENDMENT AND MISCELLANEOUS PROVISIONS) ACT, 2009-12

SCHEDULE

(section 5)

Column 1

Column 2

Enactment

Amendments

Mental Health Act Cap. 45 - *Cont'd*

(b) where the period of detention is ordered by the Court to continue under paragraph (a), shall review the sentence every 4 years thereafter.

(3) The Court may by warrant either absolutely or conditionally discharge any person detained under subsection (1).".

2. *Income Tax Act*, Cap. 73

In section 61, delete

(a) the words "Privy Council" appearing therein; and

(b) subsection (2) and substitute the following:

"(2) An appeal on a point of law shall lie as of right to the Caribbean Court of Justice from any decision of the Court of Appeal under this Section.".

3. *Community Legal Services Act*, Cap. 112A

In

(a) section 18, delete the words "Her Majesty in Council" appearing in paragraph (c) and substitute the words "the Caribbean Court of Justice"; and

(b) the First Schedule, delete in paragraph (h) of Part I, the words "or the Court of Appeal" and substitute the words ", the Court of Appeal or the Caribbean Court of Justice".

CRIMINAL APPEAL (AMENDMENT AND MISCELLANEOUS PROVISIONS) ACT, 2009-12

SCHEDULE

(section 5)

Column 1

Column 2

Enactments

Amendments

4. *Supreme Court of Judicature Act, Cap. 117A*

In section 57, delete the words "Her Majesty in Council", appearing in paragraph (b) of subsection (3) and substitute the words "The Caribbean Court of Justice".

5. *Juvenile Offenders Act, Cap. 138*

1. In section 14, delete the words "during Her Majesty's pleasure" and all the words following thereafter and substitute the following:

"during the Court's pleasure and if so sentenced, he shall be liable to be detained in such place and under such conditions as the court may direct to give effect to this provision and whilst so detained shall be deemed to be in legal custody".

2. In section 15(2), delete the words "Governor-General" and substitute the word "court".

6. *Offences Against the Person Act, Cap. 141*

In section 4, delete

(a) the words "until Her Majesty's pleasure is known, and thereupon the Governor-General on behalf of Her Majesty may give such order for the safe custody of the person during Her Majesty's pleasure as the Governor-General thinks fit" appearing in subsection (6) and substitute the following:

CRIMINAL APPEAL (AMENDMENT AND MISCELLANEOUS PROVISIONS) ACT, 2009-12

SCHEDULE

(section 5)

Column 1

Column 2

Enactments

Amendments

Offences Against the Person Act, Cap. 141 - Cont'd

"until the Court's pleasure is known, and thereupon the court may give such order for the safe custody of the person during the Court's pleasure as the court thinks fit"; and

(b) the words "Governor-General" in subsection (7) and substitute the word "court".

7. Defence Act, Cap. 159

In

(a) section 145, delete the words "Her Majesty in Council" and substitute the words "the Caribbean Court of Justice";

(b) section 148, delete the words "Her Majesty in Council" and substitute the words "the Caribbean Court of Justice".

8. Land Valuation Act, Cap. 229A

In section 23, delete the words "Her Majesty in Council" and substitute the words "the Caribbean Court of Justice".

9. Criminal Appeal Rules, 1983
(S.I. 1983 No. 102)

Delete rules 25 and 31,

JUVENILE OFFENDERS ACT, 103/1933.

**Rules Made Under Section 16 of the Juvenile
Offenders Act, 1932, (No. 22).**

1. These Rules may be cited as the Juvenile Offenders Bales, 1933.
2. Juvenile Courts shall be held on fixed days as far as is practicable.
3. Every Police Magistrate shall notify the Probation Officers a reasonable time before each sitting of a juvenile court of the names and addresses of the children or young persons to be tried at such sitting.
4. It shall be the duty of the Probation Officers some title before such sitting to interview the parents or guardians of such children or young persons and whenever possible obtain their school records.
5. It shall be lawful for a Probation Officer to interview any child or young person who has been remanded into Custody or who has been detained.
6. Whenever in the opinion of the Police Magistrate a child or young person is in need of medical treatment such Police Magistrate shall make application to the General Hospital or to the appropriate parochial almshouse for such medical treatment for the child or young person and if such application is granted it shall be the duty of the Probation Officers to ensure that such child or young person attends for such treatment.

Made by the Governor-in-Executive Committee on the 9th day of March, 1933.

G. D. OWEN,
Colonial Secretary.

(M.P.A.j.449/1932)