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VIRGIN ISLANDS

CHILDREN AND YOUNG PERSONS ACT, 2005

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I Assent
THOMAS TOWNLEY MACAN
Governor
16th April, 2005

VIRGIN ISLANDS
No. 8 of 2005

An Act to make provision for the protection of children and young persons and for related matters.

[Gazetted 5th May, 2005]

ENACTED by the Legislature of the Virgin Islands as follows:

PRELIMINARY

Short title and commencement.

1. This Act may be cited as the Children and Young Persons Act, 2005 and shall come into force on such date as the Governor may, by Proclamation published in the *Gazette*, appoint.

Interpretation.

2. In this Act, unless the context otherwise requires,

"Chief Social Development Officer" means the public officer holding such post in the Public Service of the Territory;

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

"contribution order" means an order made by a youth court under section 33 requiring any person to make contributions in respect of any child or young person committed to the care and supervision of a fit and proper person;

"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 which a child or young person is concerned, has for the time being the charge of or control over such child or young person;

"intoxicating liquor" means any fermented, distilled or spirituous liquor which cannot, save in certain specified circumstances, according to any law for the time being in force be legally sold without a licence;

"place of safety" means any place appointed by the Minister under section 15(3) to be a place of safety for the purposes of this Act;

"public place" includes any public park or garden and any ground to which the public for the time being have or are permitted to have access, whether on payment or otherwise;

"social worker" means any person for the time being performing the duties of a social worker in the Territory;

"street" includes any highway, road, lane, footway, square, court, alley, or passage, whether a thoroughfare or not;

"youth court" means a youth court established under section 2 of the Youth Courts Act, 2005;

"young person" means a person who has attained the age of sixteen years and is under the age of eighteen years.

General consideration for guidance of court.

3. Every court, in dealing with a child or young person who is brought before it as being in need of care and supervision or protection or as an offender or otherwise, shall have regard to the welfare of the child or young person and shall, if it deems it necessary, take steps of removing the child or young person from undesirable surroundings.

PART I

PREVENTION OF CRUELTY TO AND PROTECTION OF CHILDREN AND YOUNG PERSONS

Duty to report abuse.

4. (1) Notwithstanding any other law to the contrary, where an educator, health care professional, social worker or an employee of an institution responsible for the care and protection of children, or the head, employee or volunteer of any organisation that deals with or comes into regular contact with children, comes, in the course of carrying out his profession or duties, into contact with a child in circumstances which would put any reasonable person on the inquiry as to the possible abuse or ill-treatment of the child, it shall be the duty of such person to report the matter to the police.

(2) Notwithstanding any other law to the contrary, where a member of the immediate family of a child is aware or has reason to suspect, or where it is reasonable for such member to be aware or to have reason to suspect, that the child has been or is being abused or ill-treated, such member of the immediate family of the child shall report the matter to the police.

(3) A person who contravenes subsection (1) or (2) commits an offence and is liable on summary conviction to a fine not exceeding six thousand dollars or imprisonment for a term not exceeding three years.

(4) For the purpose of subsection (2), "member of the immediate family", in relation to a child, means

- (a) his father, mother or guardian;
- (b) any brother, sister or first cousin who has attained the age of eighteen years; or
- (c) any other person who has attained the age of eighteen years and who lives in the same household as the child.

Warrant to search for and remove child or young person.

5. (1) If it appears to a Magistrate on information on oath laid by any person who, in the opinion

of such Magistrate is acting in the interest of a child or young person that there is reasonable cause to suspect

- (a) that a child or young person has been or is being assaulted, ill-treated or neglected in a manner likely to cause the child or young person unnecessary suffering; or
- (b) that any offence mentioned in Schedule 1 has been or is being committed in respect of the child or young person,

the Magistrate may issue a warrant authorising any police officer

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

until, in either such case, the child or young person can be brought before a youth court.

(2) A Magistrate issuing a warrant under this section may by the same warrant cause any person accused of any offence in respect of the child or young person to be apprehended and brought before him or some other Magistrate of the Territory in order that proceedings may be taken against him according to law.

(3) Any police officer authorised by warrant under this section to search for any child or young person, or to remove any child or young person with or without search, may enter (if need be by force) any house, building or other place specified in the warrant and may remove him therefrom.

(4) The police officer 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 Magistrate by whom the warrant is issued directs, be accompanied by a duly qualified medical practitioner.

Power to bring children and young persons in need of care, supervision or protection before court.

6. (1) Any police officer or authorised person may bring before a youth court a child or young person in need of care, supervision or protection.

(2) For the purposes of this section the expression "authorised person" means

- (a) any probation officer; or
- (b) any person appointed by the Minister as such on the recommendation of the Chief Social Development Officer.

Powers of court. Schedule 1.

7. (1) A youth court before which any child or young person is brought by virtue of section 5, 6, or 8, or any court before which is brought any child or young person in respect of whom any of the offences mentioned in Schedule 1 has been committed, may, if satisfied that the welfare of the child or young person so requires, make an order

- (a) committing him to the care and supervision of any fit and proper person, whether a relative or not, who is willing to undertake the care and supervision of him;

- (b) requiring his parent or guardian to enter into a recognisance to exercise proper care, supervision and guardianship; or
- (c) placing him, either in addition to, or without making, any order under paragraph (a) or (b), for a specified period, not exceeding three years, under the supervision of a probation officer.

(2) Any order made under subsection (1), may from time to time be renewed, varied and revoked by the court on its own motion, or on the application of any person.

(3) If a youth court before which any child or young person is brought is not in a position to decide whether any or what order ought to be made under this section, it may make such interim order as it thinks fit for the child's or young person's detention or continued detention in a place of safety, or for his committal to the care and supervision of a fit person, whether a relative or not, who is willing to undertake the care and supervision of him.

(4) An interim order made under subsection (3) shall not,

- (a) where it relates to a child who has not attained the age of six years, remain in force for more than six months but at any time within that period the court may, if it considers it expedient to do so, make one or more further interim orders, so, however, that in no case shall any interim order or orders made under this and subsection (3) remain in force for a total period of more than twelve months after the date of the first order made under this section;
- (b) where it relates to a child who is aged six years or older or a young person, remain in force for more than twelve months but at any time within that period the court may, if it considers it expedient to do so, make a further interim order or orders, so, however, that in no case shall any interim order or orders made under this and subsection (3) remain in force for a total period of more than twenty-four months after the date of the first order made under this section.

(5) If at the expiration of the maximum period allowable under subsection (4) for an interim order and further interim order it is not practicable to make an order under subsection (1), the court shall order that the child or young person concerned be a ward of the court until such time as an order under subsection (1) may be made.

(6) Where a child or young person has been made a ward of the court under subsection (5), access to that child or young person shall be in accordance with such order as a court may make, and a court shall not make any order in that regard unless the order is in the best interests of the child or young person.

(7) If the youth court by which an interim order is made is satisfied on any occasion that, by reason of illness or accident, the child or young person is unable to appear personally before the court, any further interim order which the court has power to make on that occasion may be made in the absence of the child or young person.

(8) The consent of any person to undertake the care and supervision of a child or young person in pursuance of an order made under subsection (1) (a) shall be proved in such manner as the court may think sufficient to bind him.

(9) Before making any interim order or further interim order, the court shall consult such experts as it thinks fit.

(10) Wherever there is in force an order under subsection (1) and under that order the parent or a guardian is not the person having care and supervision of the child or young person, the parent or guardian, as the case may be, may apply to the court for an order that the child or young person be

released into his care and supervision and the court may grant the application if it is satisfied that releasing the child or young person to the care and supervision of that parent or guardian will be in the best interest of the child or young person concerned.

(11) In making the determination under subsection (10) as to whether releasing the child or young person to the parent or guardian will be in the best interests of the child or young person, the court shall, in addition to any other relevant matters, consider whether or not the parent or guardian making the application has participated satisfactorily in any rehabilitation or parenting programme that may have been recommended by experts.

(12) A person who is convicted for an offence under this Act in relation to a child or young person may, in addition to any penalty imposed on him by the court, be ordered to undergo counselling or a programme of parenting or rehabilitation as provided for under the

(13) An order made under subsection (1) or (12) shall be for such period as the court may, with such expert advice as it may consider necessary, determine.

Disposal of child or young person by order of court. Schedule 1.

8. (1) Where a person having the custody, charge, care and supervision of a child or young person has been

- (a) convicted, in respect of that child or young person, of any of the offences mentioned in Schedule 1;
- (b) committed for trial for any such offence; or
- (c) bound over to keep the peace towards that child or young person,

by any court, that court may order that child or young person to be brought before a youth court with a view to the youth court making an order under section 7, and shall direct that the probation officer be informed as soon as practicable of the order made.

(2) Where any court has, under this section, made an order directing that a child or young person be brought before a youth court, it shall be the duty

- (a) of the complainant, if he is a police officer, in the proceedings against the person having the custody, charge, care and supervision of the child or young person;
- (b) if that complainant is not a police officer, of the senior police officer present in court at the time that the order was made,

to bring the child or young person before the youth court.

PART II

PROCEEDINGS IN YOUTH COURTS

Provisions as to powers of youth courts.

9. On the hearing of a charge against, or an application relating to, a person who is a child or young person, a youth court may, if it thinks fit so to do, proceed with the hearing and determination of the charge or application notwithstanding that it is discovered that the person in question is not a child or young person.

Methods of dealing with young offenders.

10. (1) Where a child or young person has been found guilty of any offence before a youth court, that court (which for the purpose or the purposes of this section shall be deemed to be an inferior Court of summary jurisdiction within the meaning of the Probation of Offenders Act) may, notwithstanding the provisions of sections 94, 95, 96, 97 and 98 of the Magistrate's Code of Procedure Act [Cap. 61], make an order

- (a) dismissing the case;
- (b) under the Probation of Offenders Act;
- (c) placing the offender, either in addition to or without making any other order under this section, for a specified period not exceeding three years, under the supervision of a probation officer;
- (d) under the Criminal Justice (Alternative Sentencing) Act 2005;
- (e) committing the offender to the care and supervision of any fit and proper person, whether a relative or not, who is willing to undertake the care and supervision of him;
- (f) ordering the parent or guardian of the offender to enter into a recognisance for the good behaviour of such offender.

(2) Consent of any person to undertake the care and supervision of a child or young person in pursuance of an order made under subsection (1) (e) shall be proved in such manner as the court may think sufficient to bind him.

(3) An appeal shall lie from any decision or order of a youth court and the procedure to be followed on the bringing and hearing of such appeal shall be in accordance with the provisions of the Magistrate's Code of Procedure Act [Cap. 44].

Special provisions relating to probation.

11. (1) Where a child or young person has been placed under the supervision of a probation officer, that officer shall, while the order remains in force, visit and advise and, when necessary, endeavour to find him suitable employment, and may, if it appears necessary in his interest so to do, at any time while the order remains in force and he is under the age of sixteen years in the case of a child and under eighteen years in the case of a young person, bring him before a youth court, and that court may, if it thinks it is desirable in his interest so to do, commit him to the care and supervision of a fit person, whether a relative or not, who is willing to undertake the care and supervision of him.

(2) Where a person is bound by his recognisances before a youth court or that court makes an order under the Probation of Offenders Act [Cap. 61] in respect of a child or young person, the attainment by that person of the age of sixteen years in the case of a child and under eighteen years in the case of a young person shall not deprive the court of jurisdiction to enforce his attendance and deal with him in respect of any failure to observe the conditions of his recognisance, or of jurisdiction to vary or discharge the recognisance.

Provisions relating to committal to fit persons.

12. (1) Where under section 7 a child or young person is brought before a youth court or where a child or young person has been convicted of any offence and the court is satisfied that it is in the best interest and welfare of the child or young person to make an order committing him to the care and supervision of a fit and proper person and ascertain on inquiry that such a person is available and willing to undertake the care and supervision of the child or young person, the court shall have power to summon such fit and proper person before it for the purpose of examining such person as to his

fitness to being so appointed.

(2) A court before making an order under this Act committing a child or young person to the care and supervision of a fit and proper person, shall endeavour to ascertain the religious persuasion of the child or young person and shall, wherever possible, in making such order take into consideration such religious persuasion.

(3) Every order committing a child or young person to the care and supervision of a fit and proper person shall contain a declaration

- (a) as to the age and religious persuasion (if ascertained) of the child or young person with respect to whom the order is made; and
- (b) where a contribution order has at the same time been made under section 33, stating the amount of such contribution and by whom it is payable.

PART III

PROVISIONS PRELIMINARY TO AND TRIAL OF CHILDREN AND YOUNG PERSONS

Separation in police stations, etc. of children and young persons from persons aged eighteen or over.

13. Arrangements shall be made by the Commissioner of Police for preventing a child or young person while detained in a police station, or while being conveyed to or from any criminal court, or while waiting before or after attendance in any criminal court, from associating with any person aged eighteen or over, not being a relative, who is charged with any offence other than an offence with which the child or young person is jointly charged.

Bail or detention of children or young persons.

14. (1) Where a person apparently a child or young person is apprehended, with or without warrant, and cannot be brought forthwith before the appropriate court, the police officer in charge of the police station to which he is brought shall enquire into the case and may release him on a recognisance being entered into by him or his parent or guardian (with or without sureties) for such amount as will, in the opinion of the officer secure his attendance upon hearing of the charge, and shall so release him unless

- (a) the charge is one of homicide or other grave crime;
- (b) it is necessary in his interest to remove him from association with any reputed criminal or prostitute; or
- (c) the officer has reason to believe that his release would defeat the ends of justice.

(2) Where a person apparently a child or young person is apprehended and is not released under subsection (1), the police officer in charge of such police station shall cause him to be detained in a place of safety until he can be brought before the appropriate court.

Remand or committal to place of safety.

15. (1) A Magistrate's Court on remanding or committing for trial a child or young person who is not released on bail shall commit him to custody in a place of safety named in the commitment, to be there detained for the period for which he is remanded or until he is thence delivered in due course of

law; but in the case of a young person it is not obligatory on the court so to commit him 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 and proper person to be so detained; and where the commitment so certifies he may be committed to such place, including a youth custody, a prison or such place, as may be specified in the commitment warrant.

(2) 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 safely be detained in such custody, or to be so depraved a character that he is not a fit person to be so detained, revoked, by the court which made the order, or, if application cannot conveniently be made to that court, by any court having jurisdiction in the place where the court which made the order sat, and if it is revoked the young person may be committed to such place, including a prison, as may be specified in the commitment warrant.

(3) The Minister may by Order appoint any suitable place in the Territory to be a place of safety for the purposes of this Act.

Trial of child or young person when charged with a person aged eighteen or over.

16. Where a child or young person is charged with an offence jointly with a person who has attained the age of eighteen years or over or that person is charged at the same time with aiding, abetting, causing, procuring, allowing or permitting that offence the charge shall be heard by a Magistrate's Court.

Child or young person charged with indictable offence.

17. Where a child or young person is charged with an indictable offence, proceedings for his committal for trial shall be heard in a Magistrate's Court, and if on the termination of those proceedings the Court is satisfied that the child or young person should be committed for trial, the court shall so commit him and shall bind him and the witnesses by recognisance to appear at the court to which the child or young person is committed.

PART IV

LEGAL PROVISIONS RELATING TO CHILDREN AND YOUNG PERSONS

Power to take offenders into custody. Schedule 1

18. (1) Any police officer or probation officer may take into custody, without warrant, any person who

- (a) commits, within his view, any of the offences mentioned in Schedule 1;
- (b) has committed, or whom he has reason to believe to have committed, any offences mentioned in Schedule 1 if the police officer or probation officer has reasonable ground for believing that that person will abscond, or if the police officer or probation officer does not know and cannot ascertain that person's name and address;
- (c) commits a breach of an order made under this Act or a probation order.

(2) Where, under the powers conferred by this section, a police officer or a probation officer arrests any person without warrant, the police officer in charge of the police station to which that person is brought shall, unless in his belief the release of that person on bail would tend to defeat the ends of justice or to cause injury or danger to the child or young person against whom the offence is

alleged to have been committed, release the person arrested on that person entering into such recognisance, with or without sureties, as may in the judgment of that officer be required to secure the attendance of that person upon hearing of the charge.

Power to hear case in absence of child or young person. Schedule 1.

19. Where, in any proceedings with relation to any of the offences mentioned in Schedule 1 the court is satisfied that the attendance before it of any child or young person in respect of whom the offence is alleged to have been committed is not essential to the just hearing of the case or is not in the best interest of the child or young person, the case may be proceeded with and determined in the absence of the child or young person.

Restriction on presence of child or young person in court.

20. No child or young person shall be permitted to be present in court during the trial of any other person charged with any offence, or during any proceedings preliminary thereto, except during such time as his presence is required as a witness or otherwise for the purpose of justice; and any child or young person present in court when under this section he is not to be permitted to be so present shall be ordered to be removed.

Determination of age. Schedule 1.

21. (1) Where a person, whether charged with an offence or not, is brought before the 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, but 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, and the age presumed or declared by the court to be the age of the person so brought before it shall, for the purpose of this Act be deemed to be the true age of that person, and where it appears to the court that the person so brought before it has attained the age of sixteen in the case of a child or eighteen in the case of a young person, that person shall, for the purpose of this Act, be deemed not to be a child or young person.

(2) Where in any charge or indictment for any offence under this Act or any offences mentioned in Schedule 1, except an offence under Part VII and section 143 of the Criminal Code, 1997 [No. 1 of 1997], it is alleged that the person by or in respect of whom the offence was committed was a child or young person or was under or had attained any specified age, and he appears to the court to have been at the date of the commission of the alleged offence a child or young person or to have been under or to have attained the specified age, as the case may be, he shall for the purposes of this Act be presumed at the date to have been a child or young person or to have been under, or to have attained that age, as the case may be, unless the contrary is proved.

PART V

EVIDENCE AND PROCEDURE

Evidence of child. Schedule 4.

22. Where, in any proceedings against any person for any offence, any child who is called as a witness does not in the opinion of the court understand the nature of the oath, the provisions of Schedule 4 shall apply.

Power to clear court when child or young person giving evidence.

23. (1) Where, in any proceedings in relation to an offence against, or any conduct contrary to decency or morality, a person who, in the opinion of the court, is a child or young person is called as a witness, the court may direct that all or any persons, not being members or officers of the court or parties to the case, their legal practitioners, or persons otherwise directly concerned in the case, be excluded from the court during the taking of the evidence of that witness.

(2) The powers conferred on a court by this section shall be in addition and without prejudice to any other powers of the court to hear proceedings in camera.

Extension of power to take deposition of child or young person. Schedule 1.

24. (1) Where a Magistrate is satisfied by the evidence of a duly qualified medical practitioner that the attendance before a Magistrate's Court of any child or young person, in respect of whom any of the offences mentioned in Schedule 1 is alleged to have been committed, would involve serious danger to his life or health, the Magistrate may take in writing the deposition and add thereto a statement of his reason for taking it and of the day when and place where it was taken, and of the names of the persons (if any) present at the taking thereof.

(2) The Magistrate taking any such deposition shall transmit it with his statement,

- (a) if the deposition relates to an offence for which any accused person is already committed for trial, to the proper officer of the court for trial at which the accused person has been committed;
- (b) in any other case, to the Magistrate before whom proceedings are pending in respect of the offence.

Admission in evidence of deposition of child or young person Schedule 1.

25. (1) Subject to subsection (2), where, in any proceedings in respect of any of the offences mentioned in Schedule 1, the court is satisfied by the evidence of a duly qualified medical practitioner that the attendance before the court of any child or young person, in respect of whom the offence is alleged to have been committed, would involve serious danger to his life or health, any deposition of the child or young person taken under section 24 shall be admissible in evidence either for or against the accused person without further proof thereof if it purports to be signed by the Magistrate by or before whom it purports to be taken.

(2) The deposition referred to in subsection (1) shall not be admissible in evidence against the accused person unless it is proved that reasonable notice of the intention to take the deposition has been served upon him and that he or his legal practitioner had, or might have had if he had chosen to be present, an opportunity of cross-examining the child or young person making the deposition.

Evidence of accused person. Schedule 1. Schedule 2.

26. In proceedings against any person for any of the offences mentioned in Schedule 1, the Evidence Act [Cap. 23] shall have effect as if in the Schedule to that Act, Schedule 2 was included.

Mode of charging offence and limitation of time. Schedule 1.

27. (1) Where a person is charged with committing any of the offences mentioned in Schedule 1 in respect of two or more children or young persons, the same information or summons may charge the offence in respect of all or any of them, but the person charged shall not, if he is summarily convicted, be liable to a separate penalty in respect of each child or young person except upon separate informations.

(2) The same information or summons may also charge any person as having the custody, charge, care or supervision, alternatively or together, and may charge him with the offence of assault, ill-treatment, neglect, abandonment or exposure, together or separately, and may charge him with committing all or any of those offences in a manner likely to cause unnecessary suffering or injury to health, alternatively or together, but when those offences are charged together the person charged shall not, if he is summarily convicted, be liable to a separate penalty for each.

(3) Where any offence mentioned in Schedule 1 charged against any person is a continuous offence, it shall not be necessary to specify in the information, summons or indictment the date of the acts constituting the offence.

PART VI

MISCELLANEOUS

Court other than youth court to have power of a youth court.

28. Where under the provisions of this Act a child or young person is tried before any court which is not a youth court, then such court shall have in relation to that child or young person all the powers of a youth court.

Rights and powers of fit and proper persons.

29. The person to whose care and supervision a child or young person is committed by an order made under this Act shall, while the order is in force, have the same rights and powers and be subject to the same liabilities in respect of the child's or young person's maintenance as if he were his parent, and the child or young person so committed shall continue in his care and supervision notwithstanding any claim by a parent or other person.

Transfer of child or young person under care of fit and proper person.

30. (1) The court by which an order committing a child or young person to the care and supervision of a fit and proper person is made, may at any time, on the application of a social worker, order a child or young person under the care and supervision of a fit and proper person to be transferred to the care and supervision of some other person.

(2) Upon a child or young person being transferred in accordance with the provisions of subsection (1) the court shall cause notice thereof to be sent to the person liable to make contributions in respect of him.

Escapes from fit and proper persons.

31. (1) A child or young person who runs away from a person to whose care and supervision he has been committed under the Act may be apprehended without warrant by any police officer or

authorised person for the purposes of section 6 and brought back to that person if that person is willing to receive him and the child or young person consents.

(2) Where a child or young person is apprehended pursuant to subsection (1) and the person who has the care and supervision of the child or young person is not willing to receive him, or the child or young person requests not to be sent back to that person, then the child or young person may be taken before a youth court which may make an order in respect of him as if he had been brought before the court as being in need of care, supervision and protection.

(3) Any person who knowingly assists or induces a child or young person to run away from a person to whose care and supervision he has been committed, or harbours or conceals a child or young person who has so run away and prevents him from returning, commits an offence and is liable on summary conviction to a fine not exceeding six thousand dollars or imprisonment for a term not exceeding three years, or both.

Contributions.

32. (1) Where an order has been made by a youth court committing a child or young person to the care and supervision of a fit and proper person it shall be the duty of the following persons to make contributions in respect of him:

- (a) his father, adopted father or step-father;
- (b) his mother, adopted mother, or step-mother; and
- (c) any person, who, at the date when any such order is made, is cohabiting with the mother of the child or young person, whether he is the putative father or not.

(2) Where a child or young person has been committed to the care and supervision of a fit and proper person contributions under this Act shall be payable to that person to be applied by him in or towards the maintenance, or otherwise for the benefit, of the child or young person.

Contribution order.

33. (1) Where an order has been made by a youth court committing a child or young person to the care and supervision of a fit and proper person the court may at the same time make a contribution order on any person who is, under section 32, liable to make contributions in respect of the child or young person requiring that person to contribute such weekly sum, not exceeding two hundred dollars in respect of each child or young person, as the court having regard to his means thinks fit.

(2) A contribution order shall, unless varied or revoked, remain in force so long as the child or young person remains in the care and supervision of the fit and proper person and the court when making such order shall have regard to any affiliation order in force in respect of the child or young person and any such contribution order may be varied or revoked on the application of either the contributor or the person to whom the contributions are payable.

(3) A contribution order shall be enforceable, at the instance of the person to whom the contributions are payable, in the same manner as an affiliation order made under the Magistrate's Code of Procedure Act [Cap.44].

(4) A person on whom a contribution order is made shall, if he changes his address, forthwith give notice thereto to the person to whom, immediately before the change, the contributions were payable, and, if he fails so to do, or if he knowingly gives false notice in any material particular, he commits an offence and is liable on summary conviction to a fine not exceeding three thousand dollars or imprisonment for a term not exceeding eighteen months.

Provisions as to affiliation order.

34. (1) Where a child or young person who is ordered by a youth court to be committed to the care and supervision of a fit person is illegitimate, and an affiliation order for his maintenance is in force the court may at the same time order the payments under the affiliation order to be paid to the person to whom contributions in respect of the child or young person are payable under section 32.

(2) Any sums received under the affiliation order shall be applied in like manner as if they were contributions received under a contribution order.

(3) The making of an order under this section with respect to an affiliation order shall not extend the duration of that order.

General penalty.

35. Any person who contravenes or fails to comply with a provision under, or commits an offence against, this Act for which no special punishment is provided shall be liable, on summary conviction to a fine not exceeding two thousand dollars, and in default of payment to imprisonment for a term not exceeding two years.

Forms. Schedule 3.

36. An order, other than an interim order, committing a child or young person to the care and supervision of a fit and proper person, a contribution order and an order under section 34 shall be in the appropriate form set out in Schedule 3, and such forms may be amended or revoked and different and additional forms may be prescribed by order made by the Executive Council.

Repeal.

37. The Juvenile Act [**Cap. 37**] is repealed.

Transitional provisions and savings.

38. (1) or the avoidance of doubt, it is hereby declared that any proceedings pending in respect of an offence committed and any penalty imposed before the coming into force of this Act under the Juvenile Act [**Cap. 37**] hereby repealed may be continued in accordance with the provisions of section 29 (1) (d) of the Interpretation Act [**Cap. 136**].

(2) Any reference in an enactment or in a document to Juvenile Act [**No. 1 of 1997**] shall be construed and read as a reference to this Act, with any changes or adaptations as may be necessary.

SCHEDULE 1

[Sections 5, 7, 8, 19, 21, 24, 25, 26 and 27]

1. Any offence under Part II of this Act.
2. Any offence under sections 124, 138, 183, 187, 197, 198 and 199 of the Criminal Code, 1997.
3. Any other offence involving injury to a child or young person.

SCHEDULE 2

[Section 26]

Column I Chapter	Column II Title of Act	Column III Parts of Act referred to
No. 1 of 1997	Criminal Code, 1997	Sections 138, 183, 187, 191 and 199.

SCHEDULE 3

[Sections 7, 8, 10 and 36]

Children and Young Persons Act, 2005

ORDER COMMITTING CHILD OR YOUNG PERSON TO CARE AND SUPERVISION OF FIT AND PROPER PERSON

To

WHEREAS a child/young person was brought before the Youth Court for as being in need of care and supervision or protection, or charged with an offence of

AND WHEREAS the said court considers it expedient and in the best interest of the welfare of the said child/young person to make an order committing the said child/young person to the care and supervision of a fit and proper person who is willing to undertake the care and supervision of him.

THESE, THEREFORE, are to command you the said to deliver the said child/young person to who has undertaken to care and supervise the said child/young person, and to command you the said to receive the said child/young person into your custody and to keep him in accordance with and until he is released under the provisions of the Children and Young Persons Act.

IT IS HEREBY DECLARED THAT

- (a) the age of the said child/young person is years
..... months, being born on the day of
- (b) his religious persuasion is
- (c) a contribution order in the sum of \$ a week
payable by being the
..... of the said child/young person has been made.

Given under my hand this day of
at

.....

CONTRIBUTION ORDER

WHEREAS an order committing a child/young person to the care and supervision of has this day been/was on the day of made by this court.

AND WHEREAS the said has made application for a contribution order.

IT IS HEREBY ORDERED that being the of the said child/young person shall pay to the sum of each week to be applied in accordance with the provisions of the Children and Young Persons Act, the first of such payments to be made on the day of so long as the said child/young person remains in the care of the said or until this order is varied or revoked in accordance with the provisions of the Children and Young Persons Act.

Given under my hand this day of at

.....

ORDER TRANSFERRING PAYMENTS UNDER AFFILIATION
ORDER

WHEREAS an affiliation order was made on the day of
against of ordering him to pay the sum of
..... a week to towards the maintenance and education of
..... a child/young person of the age of

AND WHEREAS an order committing the said child/young person to the care and supervision of
..... has this day been/was on the day of
..... made by this court.

AND WHEREAS the said has made application for a
contribution order.

IT IS HEREBY ORDERED that the payments to be made by the said
under the said affiliation order shall be made to instead of to the
said the first of such payments to be made on the
..... day of so long as the said affiliation order
remains in force, to be applied in accordance with the provisions of the Children and Young Persons
Act.

Given under my hand this day of 2003 at
.....

SCHEDULE 4

[Section 22]

PROVISIONS RELATING TO EVIDENCE OF CHILD

1. Where a child under 16 years of age is presented as a witness, the court shall conduct an inquiry to determine if the child is possessed of sufficient intelligence to justify the reception of the child's evidence, and to determine if the child is competent to know the nature and consequences of giving false evidence and to know that it is wrong to give false evidence, and if the court so finds, it shall permit the child to give evidence upon taking the affirmation or oath.

2. Where a child under 16 years of age is presented as a witness and does not qualify as a witness under paragraph 1, the court shall conduct an inquiry to determine if the child is possessed of sufficient intelligence to justify the reception of the child's evidence, and understands that he should tell the truth, and where the court so finds, it shall permit the child to give evidence upon stating:

I promise to tell the truth.

3. A person charged with an offence may be convicted upon evidence admitted under paragraph 2 but in a trial by jury of a person so charged, the court shall warn the jury of the danger of acting on such evidence unless they find that the evidence is corroborated in some material particular by other evidence implicating that person.

4. A child whose evidence has been received under paragraph 2 is liable to be convicted of perjury as if he had given the evidence on oath.

5. The evidence of a child, though not given upon oath, but otherwise taken and reduced in writing as a deposition, shall be deemed to be a deposition to all intents and purposes.

6. Nothing in this section limits or affects any rule of law that prevents a person from being convicted of an offence upon uncorroborated evidence.

7. A child may give evidence by means of technology, such as, video or television links, that permits the virtual presence of the party or witness before the court, and that permits the court and the parties to hear, examine and cross-examine the witness in respect of cases involving

- (a) assault, injury or threats to the person,
- (b) a sexual offence, or
- (c) violence,

whether or not the child is the victim thereof.

8. Evidence given pursuant to paragraph 7 shall be admissible as the child's evidence.

9. A court may refuse to admit evidence given pursuant to paragraph 7 where

- (a) the child is not available for cross-examination, either physically or through live video links or television links;
- (b) rules governing disclosure of the circumstances in which the recording was made have not been complied with; or
- (c) the court is satisfied that it is not in the interests of justice to admit the evidence.

10. A child giving evidence pursuant to this Schedule in respect of a sexual offence shall not be cross-examined by a person charged with the offence.

Passed by the Legislative Council this 22nd day of March, 2005.

V. INEZ ARCHIBALD,
Speaker.

ALVA MC CALL,
Ag. Clerk or the Legislative Council.