

ABILL

ENTITLED

AN ACT to Further Amend the Child Care and
Protection Act.

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BE IT ENACTED by The King's Most Excellent Majesty, by and with the advice and consent of the Senate and House of Representatives of Jamaica, and by the authority of the same, as follows:—

1.—(1) This Act may be cited as the Child Care and Protection (Amendment) (No. 2) Act, 2023, and shall be read and construed as one with the Child Care and Protection Act (hereinafter referred to as the principal Act) and all amendments thereto.

Short title,
construction
and
commence-
ment.

(2) This Act shall come into operation on a day to be appointed by the Minister by notice published in the *Gazette*.

Amendment of
section 2 of
principal Act.

2. Section 2 of the principal Act is amended by inserting in the appropriate alphabetical sequence the following definition—

“behavioural challenges”, in relation to a child, includes—

- (a) any of the following—
 - (i) constant truancy from school;
 - (ii) running away from home;
 - (iii) staying out late without reasonable explanation, such that the child would reasonably be considered as exposing himself or herself to danger;
 - (iv) engaging in disruptive activities at school;
 - (v) low frustration threshold, being the inability to regulate his or her emotions and which may be manifested (for example) by displays of irritability, emotional outbursts, temper tantrums, procrastination or hyperactivity;
 - (vi) having unexplained injuries;
 - (vii) behaviour that is emotionally abusive or physically abusive to another individual;
 - (viii) associating with any individual or group involved with bullying at a school (as the term “school” is defined in the Education Act);
 - (ix) habitual defiance of, or non-compliance with, parental authority;
 - (x) stealing, fighting, or malicious destruction of property in the home, or (without prejudice to the foregoing) commission of any offence;

- (xi) use or possession of tobacco or tobacco products, or of any device for smoking tobacco or tobacco products;
- (xii) use or possession of any drugs contrary to the provisions of the Dangerous Drugs Act;
- (xiii) consumption of alcohol;
- (xiv) behaviour that causes harm or risk of harm to self or to any member of the same household as the child;
- (xv) suicidal ideation, being the tendency to want to kill himself or herself or having thoughts about ending his or her life; or

(b) any other behaviour that the Court before whom the child is brought considers to be a behavioural challenge.”.

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

Amendment of section 8 of principal Act.

- (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.”.

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

Amendment of section 13 of principal Act.

“ (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 a parent or guardian of the child.”.

Amendment of
section 14 of
principal Act.

5.—(1) Section 14(2) of the principal Act is amended by—

- (a) deleting paragraph (c) and substituting therefor the following—

“(c) be a supervised placement order, being an order (either in addition to or without making any order under paragraph (a) or (b)) placing the child for a specified period, not exceeding three years, under the supervision of—

- (i) in the case of a child brought before the Court in relation to an allegation that the child committed an offence, a probation and after-care officer, or some other person to be selected for the purpose by the Minister; or
 - (ii) in any other case, a children’s officer;”;
- and

- (b) deleting the full-stop at the end of paragraph (g) and substituting therefor a semi-colon, and inserting next thereafter the following paragraphs—

“(h) having regard to the results of any report or assessment made under subsection (2A) in respect of the child, make—

- (i) a residential therapeutic order if the results indicate that the child has behavioural challenges the treatment of which requires residence in a treatment facility; or

- (ii) a non-residential therapeutic order if the results indicate that the child has behavioural challenges the treatment of which requires the child to attend a treatment facility but does not require the child to reside at such a facility;
- (i) in the case of a child brought before the Court in relation to an allegation that the child committed an offence, make a reparation order, an order to make amends, an order requiring restitution or a child diversion referral order, under section 34 of the Child Diversion Act.”.

(2) Section 14 of the principal Act is amended by inserting next after subsection (2) the following subsection—

“ (2A) Before making an order under subsection (2) or (3) and without prejudice to any interim order that may be made under subsection (5) in respect of the child—

- (a) the Court may direct the Government agency responsible for children to cause to be made and to submit to the Court a social enquiry report in respect of the child; and
- (b) if the ground on which the child is before the Court is that the child is a child with behavioural challenges, the Court shall order that the government agency responsible for children cause a psychological or psychiatric assessment to be made of the child.”.

(3) Section 14(3) of the principal Act is amended by deleting the words “if circumstances have changed significantly since the order was made.” and substituting therefor the following—

“if—

- (a) circumstances have changed significantly since the order was made; or

- (b) in the case of a child in respect of whom a residential therapeutic order or non-residential therapeutic order is made, further treatment of the child pursuant to the order is warranted and therefore it is necessary to extend the period of treatment specified in the order.”.

(4) Section 14 of the principal Act is amended by inserting next after subsection (3) the following subsection—

“ (3A) In any case where a child fails to adhere to a requirement to attend or reside at a facility for the purpose of receiving treatment under a non-residential therapeutic order or a residential therapeutic order (as the case may be), the parent or guardian of the child shall promptly inform the Court.”.

(5) Section 14 of the principal Act is amended by inserting next after subsection (5) the following subsection—

“ (5A) Where the Court is satisfied that the child is exhibiting, or is likely to exhibit, violent behaviour, an interim order under subsection (5) may include provision for the child to be transported to the place of safety or to the fit person (as the case may be) by the police.”.

(6) Section 14 of the principal Act is amended by inserting next after subsection (8) the following subsection—

“ (9) In this section—

“non-residential therapeutic order” means an order—

- (a) providing for the child to whom it applies to receive during the period specified in the order, being a period that, subject to subsection (3)(b), shall not exceed one year, appropriate treatment for behavioural challenges, at a facility equipped to provide such treatment; and
- (b) that does not require that the child reside at the facility concerned;

“residential therapeutic order” means an order—

- (a) providing for the child to whom it applies to receive during the period specified in the order, being a period that, subject to subsection (3)(b), shall not exceed one year, appropriate treatment for behavioural challenges, at a facility equipped to provide such treatment; and
- (b) that requires that the child reside at the facility concerned.”.

6. Section 24 of the principal Act is repealed.

Repeal of
section 24 of
principal Act.

7. Section 76 of the principal Act is amended in subsection (1)(c) by inserting immediately before the words “placing the child” the words “being a supervised placement order”.

Amendment of
section 76 of
principal Act.

8. The Fifth Schedule of the principal Act is amended in Forms I and II in each case by deleting the words “or by his parent or guardian as being uncontrollable by such parent or guardian,”.

Amendment of
Fifth Schedule
of principal Act.

MEMORANDUM OF OBJECTS AND REASONS

A decision has been taken to Amend the Child Care and Protection Act to—

- (a) repeal section 24 of the Act, which makes provisions (which may include a correctional order) regarding the treatment of a child brought before a court by a parent or guardian who claims to be unable to control the child;
- (b) provide, instead, for any child alleged to have behavioural challenges to be brought before a Children's Court as being in need of care and protection;
- (c) make provision for the orders that may be made by the Court in respect of such a child to include a residential therapeutic order or a non-residential therapeutic order, having regard to the results of a social enquiry report and a psychological or psychiatric report in respect of the child ordered by the Court; and
- (d) provide that a Children's Court before which any child is brought under Part I of the Act, other than a child alleged to have committed an offence, may order that the child be placed under the care of a children's officer for a specified period not exceeding three years (instead of a probation and after-care officer as currently obtains under the Act).

This Bill seeks to give effect to that decision.

FAYVAL WILLIAMS
Minister of Education and Youth.

ABILL

ENTTLED

AN ACT to Further Amend the Child Care and
Protection Act.

As introduced by the Minister of Education and Youth

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SECTIONS 8 AND 13 OF THE PRINCIPAL ACT WHICH IT IS
PROPOSED TO AMEND

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

- (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.

... ..

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

... ..

SECTION 14 OF THE PRINCIPAL ACT WHICH IT IS
PROPOSED TO AMEND

14—(1)

(2) An order under subsection (1) may—

- (a) require the child's parent or guardian to enter into a recognizance to exercise proper care and guardianship;
- (b) commit the child to the care of any fit person, whether a relative or not, who is willing to undertake the care of the child;
- (c) either in addition to, or without making any order under paragraph (a) or (b), place the child for a specified period not exceeding three years, under the supervision of a probation and after-care officer, or some other person to be selected for the purpose by the Minister;

... ..

- (g) where there is reasonable cause to believe that a child is dependent on any drug, require that child to submit to a prescribed treatment programme.

... ..

(3) The Government agency responsible for children or any party to proceedings under this section may apply to the court for a variation or discharge of an order, if Circumstances have changed significantly since the order was made.

... ..

SECTION 24 OF THE PRINCIPAL ACT WHICH
IT IS PROPOSED TO REPEAL

24.—(1) The parent or guardian of a child may bring the child before a juvenile court and where such parent or guardian proves to the court that he is unable to control the child, the court may make an order in respect of the child if satisfied—

- (a) that it is expedient so to deal with the child; and
- (b) that the parent or guardian understands the results which will follow from, and consents to the making of, the order.

(2) An order under subsection (1) may—

- (a) be a correctional order; or
- (b) provide for the child—
 - (i) to be committed to the care of any fit person, whether a relative or not, who is willing to undertake the care of the child; or
 - (ii) to be placed for a specified period, not exceeding three years, under the supervision of a probation and after-care officer, a children’s officer or of some other person to be selected for the purpose by the Minister.

... ..

- (c) be a reparation order, an order to make amends, an order requiring restitution or child diversion referral order under section 34 of the Child Diversion Act; or

- (d) be a drug treatment and rehabilitation order.

... ..

SECTION 76 OF THE PRINCIPAL ACT WHICH
IT IS PROPOSED TO AMEND

76.—(1) Where a child has been found guilty of any offence before a Children’s Court, that court may, subject to the provisions of this Act, make an order—

- (a) dismissing the case;
- (b) for probation under the Probation of Offenders Act;
- (c) placing the child, 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 and after-care officer or some other person to be selected for the purpose by the Minister;

... ..

FIFTH SCHEDULE TO THE PRINCIPAL ACT
WHICH IT IS PROPOSED TO AMEND

FIFTH SCHEDULE (Section 91)
FORM I

The Child Care and Protection Act Correctional Order

To the Minister, and to all persons authorized by the said Minister and to the Managers of the juvenile correctional centre named in the endorsement hereon;

Whereas (1) a child was brought before the (2) Children’s Court for the parish of

(3)

(4) as being in need of care or protection, or by his parent or guardian as being uncontrollable by such parent or guardian, or charged with the offence of (5) ;

And whereas the (4) said court, or the Children’s Court for the parish of

(3) to which the matter was

... ..

FORM II

*The Child Care and Protection Act
Order Committing Child to Care of Fit Person*

To the Minister and to all persons authorized by the said Minister, and to the fit person named in the endorsement hereon willing to undertake the care of the child.

Whereas (1).....a child was brought before the (2) Children's Court for the parish of (3).....(4) as being in need of care or protection, or by his parent or guardian as being uncontrollable by such parent or guardian, or charged with the offence of (5);

And whereas the (4) said court, or the Children's Court for the parish of (3).....to which the matter was remitted in accordance with the provisions of the Child Care and Protection Act, considered it expedient and in the best interests of the welfare of the said child to make an order committing the said child to the care of a fit person who is willing to undertake the care of him;

These, therefore, are to command you the said Minister and all persons authorized by the said Minister to detain the said child (2) in a place of safety until the name of a fit person willing to undertake the care of the child is endorsed hereon by the Minister and then to take the said child to the said fit person and deliver him to the said fit person: and to command you, the said fit person named in the endorsement hereon, to receive the said child into your custody and to keep him in accordance with and until he is released under the provisions of the Child Care and Protection Act.

