

JAMAICA

No. 20 - 2016

I assent,



P. L. Allen

Governor-General.

14th day of December 2016

AN ACT to Amend the *Criminal Justice (Reform) Act*, the *Child Care and Protection Act*, the *Corrections Act* and the *Parole Rules, 1978*, in order to provide for the use of restorative justice procedures as an option in the criminal justice system.

[15th day of December 2016

BE IT ENACTED by The Queen'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. This Act may be cited as the Law Reform (Miscellaneous Amendments) (Restorative Justice) Act, 2016, and shall come into operation on a day to be appointed by the Minister by notice published in the *Gazette*, and different days may be appointed in respect of different provisions of the Schedule.

Short title
and
commence-
ment.

Schedule.

2

[No.]

*The Law Reform (Miscellaneous Amendments)
(Restorative Justice) Act, 2016*

Amendments
to
enactments
and
construction
thereof.
Schedule.

2. The enactments specified in column 1 of the Schedule are amended in the manner specified in relation thereto in column 2 of the Schedule, and this Act shall be read and construed as one with those enactments.

SCHEDULE (Section 2)

Column 1	Column 2
Enactment	Amendment

1. *The Criminal Justice (Reform) Act.*
- 1.—(1) In section 5—
- (a) delete the marginal note and substitute therefor the following—
- “Probation orders: ancillary requirements.”;
- (b) delete subsection (1) and substitute therefor the following—
- “ (1) Where a court makes a probation order under section 5 of the *Probation of Offenders Act*, the court may, in addition to the requirements specified in section 6 of that Act, and subject to the provisions of this section, include in the probation order either or both of the following requirements—
- (a) a requirement that the probationer shall, during the period of such probation, attend a day training centre specified in the order;
- (b) a requirement that the probationer participate in a restorative justice programme specified in the order.”;
- (c) in subsection (2), delete the words “such a requirement in a probation order” and substitute therefor the words “, in a probation order, the requirement specified in subsection (1)(a)”;
- and

Column 1

Column 2

Enactment

Amendment

(d) in subsection (3) delete the words “this section” and substitute therefor the words “subsection (1)(a)”.

(1A) Insert next after section 5 the following section—

“ Purpose
and
objectives
of
restorative
justice.

5A.—(1) The purpose of restorative justice proceedings is to hold offenders accountable in a more meaningful way to the victim and community and provide an opportunity for healing and the lasting reconciliation of relationships between the victim and offender and their families, where the offender accepts responsibility for the offence and there are one or more victims of the offence concerned.

(2) The objectives of a restorative justice programme under section 5 or 16A (as the case may be) shall be to bring together the offender and the victim, guided by a facilitator, in order to—

- (a) address the harm suffered by the victim;
- (b) identify the obligations of the offender to the victim that arise out of the offence concerned;

Column 1

Column 2

Enactment

Amendment

- (c) attend to the needs of victims by empowering them to participate in identifying reparative measures to be taken by the offender; and
- (d) reintegrate the offender into the community by supporting the rebuilding of broken relationships.”

(2) Insert next after section 16 the following sections—

“Determination that restorative justice order is appropriate.
Part I.
Third Schedule.

16A.—(1) Before commencing the trial of a person for an offence listed in Part I of the Third Schedule, the court may, of its own motion or on the recommendation of a Clerk of the Court or a constable, determine that it is appropriate to make an order referring the matter to a restorative justice programme—

- (a) having regard to all the circumstances and, in particular, the factors set out in subsection (3);

Column 1

Column 2

Enactment

Amendment

Form 1.
Fourth
Schedule.

(b) if the person charged consents, as evidenced by signing a completed Form 1 of the Fourth Schedule, to participation in a restorative justice programme; and

Form 2.
Fourth
Schedule.

(c) if there are one or more victims of the offence charged and each such victim consents, as evidenced by signing a completed Form 2 of the Fourth Schedule, to participation in a restorative justice programme.

Part II.
Third
Schedule.

(2) Where the trial of an offence, other than an offence listed in Part II of the Third Schedule, has commenced in respect of a person and has resulted in that person's conviction, the court may, before sentence is passed, determine that it is appropriate to make an order referring the matter to a restorative justice programme—

(a) having regard to the factors set out in subsection (3);

*The Law Reform (Miscellaneous Amendments) [No.]
(Restorative Justice) Act, 2016*

7

Column 1

Column 2

Enactment

Amendment

Form 1.
Fourth
Schedule.

(b) if the person convicted consents, as evidenced by signing a completed Form 1 of the Fourth Schedule, to participation in a restorative justice programme; and

Form 2.
Fourth
Schedule.

(c) if there are one or more victims of the offence charged and at least one such victim consents, as evidenced by signing a completed Form 2 of the Fourth Schedule, to participation in a restorative justice programme.

(3) The factors referred to in subsections (1) and (2) are—

(a) the possible benefits to be derived, by the alleged offender or the convicted offender (as the case may be), and the victim, from the restorative justice process;

Column 1
—

Enactment
—

Column 2
—

Amendment
—

(b) that a restorative justice programme exists and arrangements can be made for the participation by the parties in the programme;

(c) where the victim is a person under the age of eighteen years or a person who is incapable of giving consent for the purposes of subsection (1)(c) or (2)(c), the best interests of that person; and

(d) any matter which in the opinion of the court would make reference to a restorative justice programme inappropriate in the circumstances.

(4) The Minister may by order, subject to affirmative resolution, amend the Third and Fourth Schedules.

Third and
Fourth
Schedules.

(5) Without prejudice to the generality of subsection (4), an order under that subsection may make provision for offences which are

*The Law Reform (Miscellaneous Amendments) [No.]
(Restorative Justice) Act, 2016*

9

Column 1

Column 2

Enactment

Amendment

eligible or ineligible for referral to a restorative justice programme under subsection (1) or (2) or both.

(6) In any case where a victim is—

(a) under the age of fourteen years, consent for the purposes of this section may be given on the victim's behalf by the victim's parent or guardian, or by the Children's Advocate (or the nominee of the Children's Advocate) in any case where—

(i) such parent or guardian cannot be located; or

(ii) the court is satisfied that such parent or guardian is incapable of giving consent for the purposes of

Column 1
—

Enactment
—

Column 2
—

Amendment
—

this section
by reason
of any
physical, in-
tellectual or
mental im-
pairment;

(b) a person who has at-
tained the age of four-
teen years but who
has not attained the
age of eighteen
years, consent for
the purposes of this
section means the
consent of both that
person and—

(i) one of the per-
son's parents,
or the person's
guardian; or

(ii) the Children's
Advocate (or
the nominee of
the Children's
Advocate) in
any case
where—

(A) the per-
son's pa-
rents or
guardian
cannot
be lo-
cated; or

*The Law Reform (Miscellaneous Amendments) [No.]
(Restorative Justice) Act, 2016*

11

Column 1

Column 2

Enactment

Amendment

(B) the court is satisfied that neither of the person's parents, nor the person's guardian, is capable of giving consent for the purposes of this section by reason of any physical, intellectual or mental impairment;

(c) a person who has attained the age of eighteen years, and who the court is satisfied is unable to give consent for the purposes of this section by reason

*The Law Reform (Miscellaneous Amendments)
(Restorative Justice) Act, 2016*

Column 1

Column 2

Enactment

Amendment

of any physical, intellectual or mental impairment, that consent may be given by a member of the person's immediate family who has attained the age of eighteen years; or

- (d) deceased, consent for the purposes of this section may be given by a member of the person's immediate family who has attained the age of eighteen years,

and the person giving such consent shall be entitled to participate as a party in the restorative justice proceedings.

(7) In this section—

“guardian”, in relation to a child, includes any person who has for the time being the charge of, or control over, the child;

“member of the person's immediate family” means that person's—

- (a) spouse, as defined by

Column 1

Column 2

Enactment

Amendment

section
2(1)(d) of
the *Intes-
tates'
Estates
and Pro-
perty
Charges
Act;*

(b) child,
adopted
child or
stepchild;

(c) brother,
sister,
step-
brother or
step-
sister;

(d) parent or
steppar-
ent; or

(e) grand-
parent,

or any other person
who the court deter-
mines to be of suffi-
cient proximate re-
lationship (whether by
blood or otherwise)
to be considered a
member of the per-
son's immediate
family;

“victim” means a person
against whom the off-
ence concerned is

*The Law Reform (Miscellaneous Amendments)
(Restorative Justice) Act, 2016*

Column 1

Column 2

Enactment

Amendment

committed or who suffers physical injury, or loss or damage to property, as a result of the commission of the offence concerned.

Form and effect of restorative justice order.

16B.—(1) In this section—

“approved facilitator” means a facilitator included on a list of facilitators published by the Ministry responsible for justice, whether on its website or otherwise, for the purposes of this section;

“restorative justice agreement” means an agreement signed by the approved facilitator who has conduct of the restorative justice proceedings, the alleged offender or convicted offender (as the case

Column 1

Column 2

Enactment

Amendment

may be), and the
victim, and which—

- (a) sets out the commitments that the alleged offender or convicted offender (as the case may be) agrees to undertake in order to address the harm the offence has caused to the victim; and
- (b) provides that once the alleged offender or convicted offender (as the case may be) fulfils the commitments referred to in para-

Column 1
—

Enactment
—

Column 2
—

Amendment
—

graph (a)
any criminal charges against the alleged offender or convicted offender (as the case may be) in respect of the offence will be dealt with in accordance with subsection (6) or (7) (as the case may require), and that no civil action will be taken in respect of the harm referred to in paragraph (a);

“victim” has the meaning assigned to it in section 16A and, where applicable, refers to the person entitled to give

Column 1

Column 2

Enactment

Amendment

consent on behalf of a
victim for the purposes
of that section.

(2) If, pursuant to
section 16A, the court
determines that an order
referring a matter to a rest-
orative justice programme is
appropriate, the court shall
make an order (hereinafter
referred to as a “restorative
justice order”) referring the
matter to a restorative justice
programme conducted by an
approved facilitator.

(3) Where a restorative
justice order is made in the
circumstances specified in
section 16A(1) (order made
before commencement of trial),
the trial of the offence shall
not commence unless the
court has made the deter-
mination referred to in sub-
section (6)(b).

(4) A restorative justice
order made in the cir-
cumstances specified in
section 16A(2) (order after
conviction but before sen-
tence is passed) shall operate
as an adjournment of the trial
of the offence and the trial

*The Law Reform (Miscellaneous Amendments)
(Restorative Justice) Act, 2016*

Column 1
—

Enactment
—

Column 2
—

Amendment
—

shall not resume unless the court has made the determination referred to in subsection (6)(b).

(5) A restorative justice order under this section shall—

- (a) specify the time within which the restorative justice proceedings shall be concluded;
- (b) specify the time within which a report on the outcome of the restorative justice proceedings shall be submitted to the court by the approved facilitator, setting out—
 - (i) whether a restorative justice conference was held;
 - (ii) whether a restorative justice agreement was reached and, if so, a copy of the agreement; and

Column 1
—
Enactment
—

Column 2
—
Amendment
—

(iii) the steps taken in performance of the commitments made under the restorative justice agreement and outlining any commitments left to be performed; and

(c) fix a date on which the parties involved shall appear before the court for the purposes of subsection (6) or (7) (as the case may require),

and the court may extend any time or date specified under this subsection.

(6) Where the trial of an offence has been deferred by virtue of subsection (3), or adjourned by virtue of subsection (4) and the court determines that—

(a) the matter has been resolved by the restorative justice proceedings, and that the commitments required to be performed

*The Law Reform (Miscellaneous Amendments)
(Restorative Justice) Act, 2016*

Column 1
—

Enactment
—

Column 2
—

Amendment
—

under the restorative justice agreement have been satisfactorily performed, the court shall make an order dismissing the charge against the person charged; or

- (b) the matter has not been resolved by the restorative justice proceedings, and there is no reasonable prospect of such resolution, the court shall proceed to, or resume, the trial.

(7) Where the trial of a matter has been adjourned by virtue of subsection (4) after the person charged has been convicted of the offence but prior to sentence being passed, and the court is satisfied that—

- (a) a restorative justice agreement has been arrived at by the parties, the court shall take into account the terms of the agreement, and the extent

Column 1

Column 2

Enactment

Amendment

to which the commitments made in the agreement have been satisfactorily performed, in determining how to proceed in relation to sentence, and shall proceed accordingly; or

- (b) a restorative justice agreement has not been arrived at by the parties, the court shall proceed to sentence the offender as if the restorative justice proceedings had not occurred.

Protections in relation to restorative justice proceedings.

16C.—(1) Subject to section 16B, any admission made or information disclosed for the purposes of restorative justice proceedings—

- (a) shall be treated as confidential; and
- (b) shall not be admissible in any proceedings before a court or tribunal, and no person shall be compellable in any such proceedings to

Column 1

Column 2

Enactment

Amendment

disclose the admission or information or to produce any document that contains the admission or information.

(2) An alleged offender's consent to participate in a restorative justice programme or an alleged offender's entry into, or performance of any commitments made under, a restorative justice agreement under this Act shall not amount to or be treated as a confession or an admission of guilt for the purposes of any criminal proceedings.

Pre-charge restorative justice proceedings not prejudiced.

16D. Nothing in section 16A or 16B shall preclude the use of restorative justice proceedings as a means of resolving any dispute prior to a charge being brought arising from any such dispute.”.

(3) In section 20—

- (a) delete the word “and” appearing at the end of paragraph (e);
- (b) delete the full-stop appearing at the end of paragraph (f) and substitute therefor a semi-colon; and

*The Law Reform (Miscellaneous Amendments) [No.]
(Restorative Justice) Act, 2016*

23

Column 1

Column 2

Enactment

Amendment

- (c) insert next after paragraph (f) the following paragraph—

“(g) as to the procedure upon referral to a restorative justice programme, the conduct of such programmes, and the forms to be used in connection therewith.”.

Column 1

Column 2

Enactment

Amendment

(4) Insert next after the Second Schedule the following schedules—

“ THIRD SCHEDULE (Section 16A)

PART I

*Offences in Respect of which
Referral may be made to a Restorative
Justice Programme before Trial*

1. Any offence for which a term of imprisonment of not more than three years may be imposed, other than any offence under—
 - (a) section 6(1)(b) (grievous sexual assault), 6(d)(ii) (attempt to commit grievous sexual assault), 13 (indecent assault), 28 (anonymity of complainant) or 35 (contravention of reporting requirement by sex offender) of the *Sexual Offences Act*;
 - (b) section 17 (contravention of direction to protect witness) of the *Criminal Justice (Suppression of Criminal Organizations) Act, 2014*; or
 - (c) section 11 (breach of confidentiality as to identity of victim) of the *Child Pornography Prevention Act*.
2. Simple larceny, under section 5 of the *Larceny Act*, other than larceny of agricultural products or livestock.
3. Larceny in a dwelling house, under section 18 of the *Larceny Act*.

Column 1

Column 2

Enactment

Amendment

4. Larceny from the person, under section 19 of the *Larceny Act*.
5. Larceny by tenants or lodgers, under section 21 of the *Larceny Act*.
6. Larceny or embezzlement by clerks or servants, under section 22 of the *Larceny Act*.
7. Conversion, under section 24 of the *Larceny Act*.
8. Any offence under section 42 of the *Malicious Injuries to Property Act*.

PART II

*Offences in Respect of which Referral
shall not be made under section 16A(2) to a
Restorative Justice Programme*

1. Murder.
2. Any offence under section 8, 13, 14, 15, 16, 17, 18, 20, 69 or 70 of the *Offences Against the Person Act*.
3. Any offence under section 2, 3 or 4 of the *Treason Felony Act*.
4. An offence under section 3 of the *Malicious Injuries to Property Act* (arson of a dwelling house).
5. An offence under section 42A of the *Larceny Act* (extortion).
6. An offence under section 4, 9, 10, 20, 24 or 25 of the *Firearms Act*.
7. An offence under section 3, 5, 6, 7, 7A, 7B, 8, 8A, 9, 11 or 21A of the *Dangerous Drugs Act*.

Column 1

Column 2

Enactment

Amendment

8. An offence under section 4 of the *Trafficking in Persons (Prevention, Suppression and Punishment) Act*.
9. An offence under section 10 of the *Child Care and Protection Act* (trafficking of children).
10. Any offence under the *Terrorism Prevention Act*.
11. Any offence under the *Sexual Offences Act*.
12. Any offence contained in the First Schedule to the *Praedial Larceny (Prevention) Act*, other than the offence of simple larceny under section 5 of the *Larceny Act* not involving larceny of agricultural produce or livestock.
13. The offence of perverting the course of justice.
14. Any offence under the *Criminal Justice (Suppression of Criminal Organizations) Act*.
15. Any offence under the *Law Reform (Fraudulent Transactions) (Special Provisions) Act*.

Column 1

Column 2

Enactment

Amendment

FOURTH SCHEDULE (Section 16A)

FORM 1

Offender or Alleged Offender Consent Form

GOVERNMENT OF JAMAICA—
MINISTRY OF JUSTICE
NATIONAL RESTORATIVE JUSTICE
PROGRAMME

CONSENT TO PARTICIPATE FORM

*Consent of Person *[Arrested and Charged
with] [Convicted
of] a Relevant Offence to be Referred to a
Restorative Justice Programme*

I, _____

of _____

having been *[arrested and charged with] [convicted
of] the offence of _____

do hereby signify my consent to be referred to a
restorative justice programme.

.....
Signature of person *[arrested Date
charge] [convicted]

.....
Signature of referral source Date

*Delete the option which does not apply.

Column 1

Column 2

Enactment

Amendment

FORM 2

Victim Consent Form

GOVERNMENT OF JAMAICA—MINISTRY
OF JUSTICE
NATIONAL RESTORATIVE JUSTICE
PROGRAMME

CONSENT TO PARTICIPATE FORM

*Consent of Victim to Participate in a Restorative
Justice Programme*

I, _____

of _____

having been impacted by an offence of _____

do hereby signify my consent to participate in a
restorative justice programme.

.....
Signature of victim impacted
by relevant offence

.....
Date

.....
Signature of referral source

.....
Date.”

Column 1

Column 2

Enactment

Amendment

2. *The Child Care
and Protec-
tion Act.*

2.—(1) Delete the marginal note to section 65 and substitute therefor the following—

“ Best interests, restorative justice, and other factors to be considered by courts.”.

(2) Renumber section 65 as section 65(1) and insert next thereafter the following as subsection (2)—

“ (2) The provisions of sections 5, 16A, 16B and 16C of the *Criminal Justice (Reform) Act* shall apply to every court dealing with a child charged with an offence, subject to the provisions of subsection (1).”.

(3) In section 76(1) delete the full stop appearing after paragraph (h), substitute therefor a semi-colon, and insert next after paragraph (h) the following paragraph—

“(i) under section 16B(2) of the *Criminal Justice (Reform) Act* (restorative justice order).”.

3. *The Correc-
tions Act.*

3.—(1) In section 58(1) delete the full stop appearing at the end of paragraph (b), substitute therefor a semi-colon, and insert next thereafter the following paragraph—

“(c) a restorative justice programme, if the detained person is a convicted person and the conditions set out in section 58A are met.”.

(2) In section 58, insert next after subsection (1) the following subsection—

“ (1A) The Minister shall consult with the Minister responsible for justice in determining any scheme under subsection (1)(c) and, in particular, in relation to the factors to be set out pursuant to section 58A(1)(a).”.

Column 1

Column 2

Enactment

Amendment

(3) Insert next after section 58 the following section—

“ Conditions for application of section 58(1)(c). 58A.—(1) The conditions referred to in section 58(1)(c) are that—

- (a) the scheme sets out the factors to be taken into account in determining whether a convicted person is eligible to participate in a restorative justice programme; and
- (b) the scheme applies only in circumstances where—
 - (i) the convicted person accepts responsibility for that person’s actions in respect of the offence concerned and consents, as evidenced by signing a completed Form 1 of the Third Schedule, to participation in a restorative justice programme; and
 - (ii) there are one or more victims of the offence concerned and at

Form 1.
Third
Schedule.

Column 1

Column 2

Enactment

Amendment

Form 2.
Third
Schedule.

least one such victim consents, as evidence by signing a completed Form 2 of the Third Schedule, to participation in a restorative justice programme.

(2) The Minister may by order, subject to affirmative resolution, amend the Third Schedule.

(3) In any case where a victim is—

(a) under the age of fourteen years, consent for the purposes of this section may be given on the victim's behalf by the victim's parent or guardian, or by the Children's Advocate (or the nominee of the Children's Advocate) in any case where—

(i) such parent or guardian cannot be located; or

(ii) the Commissioner is satisfied that such parent or guardian is incapable of giving consent for the pur-

Column 1

Column 2

Enactment

Amendment

poses of this section by reason of any physical, intellectual or mental impairment;

(b) a person who has attained the age of fourteen years but who has not attained the age of eighteen years, consent for the purposes of this section means the consent of both that person and—

(i) one of the person's parents, or the person's guardian; or

(ii) the Children's Advocate (or the nominee of the Children's Advocate) in any case where—

(A) the person's parents or guardian cannot be located; or

(B) the court is satisfied that neither of

Column 1

Column 2

Enactment

Amendment

the person's
parents,
nor the
person's
guardian,
is capable
of giving
consent
for the pur-
poses of
this sec-
tion by
reason of
any phy-
sical,
intellectual,
or mental
impairment;

- (c) a person who has attained the age of eighteen years, and who the Commissioner is satisfied is unable to give consent for the purposes of this section by reason of any physical, intellectual or mental impairment, that consent may be given by a member of the person's immediate family who has attained the age of eighteen years; or
- (d) deceased, consent for the purposes of this section may be given by a member of the person's immediate family who has attained the age of eighteen years,

Column 1
—Column 2
—Enactment
—Amendment
—

and the person giving such consent shall be entitled to participate as a party in the restorative justice proceedings.

(4) In this section—

“guardian”, in relation to a child, includes any person who has for the time being the charge of, or control over, the child;

“member of the person’s immediate family” means that person’s—

(a) spouse, as defined by section 2(1)(d) of the *Intestates’ Estates and Property Charges Act*;

(b) child, adopted child or step-child;

(c) brother, sister, stepbrother or stepsister;

(d) parent or step-parent; or

(e) grandparent,

or any other person who the Commissioner deter-

Column 1

Column 2

Enactment

Amendment

mines to be of sufficient proximate relationship (whether by blood or otherwise) to be considered a member of the person's immediate family;

“victim” means a person against whom the offence concerned was committed or who suffered physical injury, or loss or damage to property, as a result of the commission of the offence concerned.”.

(4) In section 81(1)—

- (a) delete the word “and” appearing at the end of paragraph (h);
- (b) delete the full-stop appearing at the end of paragraph (i) and substitute therefor a semicolon; and
- (c) insert next after paragraph (i) the following paragraph—

“(j) the provision of medical certificates or other forms of documentary evidence in support of a claim that a person is unable to give consent for the purposes of section 58A (consent to participation in restorative justice programme).”.

Column 1
—Column 2
—Enactment
—Amendment
—

(5) Insert next after the Second Schedule the following schedule—

“ THIRD SCHEDULE (Section 58A)

FORM 1

*Offender Consent Form*GOVERNMENT OF JAMAICA—MINISTRY OF
JUSTICE
NATIONAL RESTORATIVE JUSTICE
PROGRAMME
CONSENT TO PARTICIPATE FORM*Consent of Person Convicted of a Relevant
Offence to be Referred to a Restorative Justice
Programme*

I, _____

of _____

having been convicted of the offence of _____

do hereby signify my consent to be referred to a
restorative justice programme......
Signature of person convicted.....
Date.....
Signature of referral source.....
Date

Column 1

Column 2

Enactment

Amendment

FORM 2

Victim Consent Form

GOVERNMENT OF JAMAICA—MINISTRY OF
JUSTICE
NATIONAL RESTORATIVE JUSTICE
PROGRAMME
CONSENT TO PARTICIPATE FORM

*Consent of Victim to Participate in a Restorative
Justice Programme*

I, _____
of _____
having been impacted by an offence of _____

do hereby signify my consent to participate in a
restorative justice programme.

.....
Signature of victim impacted Date
by relevant offence

.....
Signature of referral source Date

Column 1

Column 2

Enactment

Amendment

4. *The Parole
Rules,
1978.*

4.—(1) In rule 9, insert next after paragraph (2) the following paragraphs—

“

(2A) The Board may require an applicant to participate in a restorative justice programme as a condition of the grant of parole where—

(a) the applicant accepts responsibility for the applicant's actions in respect of the offence concerned and consents, as evidenced by signing a completed Form 1 of the Second Schedule, to participation in a restorative justice programme;

Form 1.
Second
Schedule.

(b) there are one or more victims of the offence concerned and at least one such victim consents, as evidenced by signing a completed Form 2 of the Second Schedule, to participation in a restorative justice programme; and

Form 2.
Second
Schedule.

(c) a restorative justice programme exists, and arrangements can be made for the participation of the parties in the programme.

(2B) In any case where the victim is—

(a) under the age of fourteen years, consent for the purposes of this rule may be given on the victim's

Column 1

Column 2

Enactment

Amendment

behalf by the victim's parent or guardian, or by the Children's Advocate (or the nominee of the Children's Advocate) in any case where—

- (i) such parent or guardian cannot be located; or
 - (ii) the Board is satisfied that such parent or guardian is incapable of giving consent for the purposes of this rule, by reason of any physical, intellectual or mental impairment;
- (b) a person who has attained the age of fourteen years but who has not attained the age of eighteen years, consent for the purposes of this section means the consent of both that person and—
- (i) one of the person's parents, or the person's guardian; or
 - (ii) the Children's Advocate (or the nominee of the Children's Advocate) in any case where—
 - (A) the person's parents or guardian cannot be located; or

Column 1
—Column 2
—Enactment
—Amendment
—

- (B) the court is satisfied that neither of the person's parents, nor the person's guardian, is capable of giving consent for the purposes of this section by reason of any physical, intellectual or mental impairment;
- (c) a person who has attained the age of eighteen years, and who the Board is satisfied is unable to give consent for the purposes of this rule, by reason of any physical, intellectual or mental impairment, that consent may be given by a member of the person's immediate family who has attained the age eighteen years; or
- (d) deceased, consent for the purposes of this rule may be given by a member of the person's immediate family who has attained the age eighteen years,

Column 1

Column 2

Enactment

Amendment

and the person giving such consent shall be entitled to participate as a party in the restorative justice proceedings.

(2C) For the purposes of paragraph (2B), the Board may require the provision of such medical certificates or other documentary evidence in support of any alleged impairment, as the Board considers fit.

(2D) In this rule—

“guardian”, in relation to a child, includes any person who has for the time being the charge of, or control over, the child;

“member of the person’s immediate family” means that person’s—

- (a) spouse, as defined by section 2(1)(d) of the *Intestates’ Estates and Property Charges Act*;
- (b) child, adopted child or stepchild;
- (c) brother, sister, step-brother or stepsister;
- (d) parent or step-parent; or
- (e) grandparent,

or any other person who the Board determines to be of sufficient proximate relationship (whether

Column 1Column 2EnactmentAmendment

by blood or otherwise) to be considered a member of the person's immediate family;

“victim” means a person against whom the offence concerned is committed or who suffers physical injury, or loss or damage to property, as a result of the commission of the offence concerned.”.

(2) Renumber the Schedule as the First Schedule and, accordingly, delete the word “Schedule” wherever it appears in the Rules and substitute therefor in each case the words “First Schedule”.

Column 1

Column 2

Enactment

Amendment

(3) Insert next after the First Schedule (as renumbered) the following schedule—

“ SECOND SCHEDULE (Rule 9)

FORM 1

Offender Consent Form

GOVERNMENT OF JAMAICA—
MINISTRY OF JUSTICE

NATIONAL RESTORATIVE JUSTICE
PROGRAMME

CONSENT TO PARTICIPATE FORM

*Consent of Parolee to be Referred to a
Restorative Justice Programme*

I, _____

of _____

having been convicted of the offence of _____

do hereby signify my consent to be referred to a restorative justice programme.

.....
Signature of parolee

.....
Date

.....
Signature of referral source

.....
Date

Column 1

Column 2

Enactment

Amendment

FORM 2

Victim Consent Form

GOVERNMENT OF JAMAICA—MINISTRY OF JUSTICE
NATIONAL RESTORATIVE JUSTICE PROGRAMME

CONSENT TO PARTICIPATE FORM

*Consent of Victim to Participate in a Restorative
Justice Programme*

I, _____

of _____

having been impacted by an offence of _____

do hereby signify my consent to participate in a restorative
justice programme.

.....
Signature of victim impacted
by relevant offence

.....
Date

.....
Signature of referral source

.....
Date

Passed in the House of Representatives this 26th day of July, 2016 with eight
(8) amendments.

FRANKLIN R. WITTER
Deputy Speaker.

Passed in the Senate this 3rd day of November, 2016 with twenty-six (26)
amendments.

THOMAS TAVARES-FINSON
President.

*The Law Reform (Miscellaneous Amendments) [No.]
(Restorative Justice) Act, 2016*

45

On the 9th day of November, 2016 the House of Representatives agreed to the amendments made by the Senate.

PEARNEL CHARLES
Speaker.

This printed impression has been carefully compared by me with the Bill which has passed the House of Representatives and Senate, and has been found by me to be a true and correct printed copy of the said Bill.


Clerk to the Houses of Parliament.

