



LAWS OF MALAYSIA

REPRINT

Act 611

CHILD ACT 2001

Incorporating all amendments up to 1 January 2006

PUBLISHED BY
THE COMMISSIONER OF LAW REVISION, MALAYSIA
UNDER THE AUTHORITY OF THE REVISION OF LAWS ACT 1968
IN COLLABORATION WITH
PERCETAKAN NASIONAL MALAYSIA BHD
2006

CHILD ACT 2001

Date of Royal Assent... .. 15 February 2001

Date of publication in the *Gazette* 1 March 2001

PREVIOUS REPRINT

First Reprint 2002

LAWS OF MALAYSIA

Act 611

CHILD ACT 2001

ARRANGEMENT OF SECTIONS

PART I

PRELIMINARY

Section

1. Short title, application and commencement
2. Interpretation

PART II

CO-ORDINATING COUNCIL FOR THE PROTECTION OF CHILDREN

3. Establishment of the Co-ordinating Council for the Protection of Children
4. Membership of Council
5. Meeting of Council
6. Establishment of committees
7. Establishment of Child Protection Teams

PART III

APPOINTMENT OF PROTECTOR, *ETC.*

8. Appointment and powers of Protectors
9. Appointment of Registrar General and Registrar
10. Appointment of probation officers

PART IV

COURTS FOR CHILDREN

Section

11. Constitution and jurisdiction of Court For Children
12. Place of sitting and persons who may be present in Court For Children
13. Period specified in any order made by Court For Children not to extend beyond the date child attains the age of eighteen years
14. Court For Children may order detention, *etc.*, to extend beyond the date child attains the age of eighteen years
15. Restrictions on media reporting and publication
16. Presumption as to age

PART V

CHILDREN IN NEED OF CARE AND PROTECTION

CHAPTER 1

GENERAL

17. Meaning of child in need of care and protection

CHAPTER 2

TEMPORARY CUSTODY AND MEDICAL EXAMINATION
AND TREATMENT

18. Taking a child into temporary custody
19. Production before Court For Children
20. Child in need of medical examination or treatment
21. Medical examination and treatment
22. Authorization of hospitalization
23. Control over hospitalized children
24. Authorization of medical treatment
25. Steps to be taken after medical examination or treatment
26. No liability incurred for giving authorization
27. Duty of medical officer or medical practitioner
28. Duty of member of the family

Section

- 29. Duty of child care provider
- 30. Powers of Court For Children

CHAPTER 3

OFFENCES IN RELATION TO THE HEALTH AND
WELFARE OF CHILDREN

- 31. Ill-treatment, neglect, abandonment or exposure of children
- 32. Children not to be used for begging, *etc.*
- 33. Offence to leave child without reasonable supervision

CHAPTER 4

NOTIFICATION ON TAKING A CHILD INTO CARE,
CUSTODY OR CONTROL

- 34. Application and interpretation
- 35. Notification of taking a child into care, custody or control
- 36. Subsequent obligations
- 37. Power of Protector to require child to be produced before him

PART VI

CHILDREN IN NEED OF PROTECTION AND REHABILITATION

CHAPTER 1

GENERAL

- 38. Meaning of child in need of protection and rehabilitation
- 39. Removal of a child to place of refuge
- 40. Orders upon completion of an inquiry
- 41. Children in urgent need of protection
- 42. Inquiries and detention of a child who has been bought or acquired under false pretences, *etc.*

CHAPTER 2

OFFENCES

- 43. Offences

Section

44. Presumptions relating to section 43
45. Detention pending proceedings

PART VII

BEYOND CONTROL

46. Children beyond control
47. Supervision by probation officer

PART VIII

TRAFFICKING IN AND ABDUCTION OF CHILDREN

48. Unlawful transfer of possession, custody or control of child
49. Importation of child by false pretences
50. Examination of child and person in charge
51. Protector may require security
52. Offence of taking or sending out a child without appropriate consent of person having lawful custody
53. Recovery order

PART IX

INSTITUTIONS

CHAPTER 1

PLACES OF SAFETY AND PLACES OF REFUGE

54. Places of safety
55. Places of refuge
56. Child who escapes or is removed from place of safety or place of refuge
57. Offence of removing or helping a child to escape from place of safety or place of refuge

CHAPTER 2

PLACES OF DETENTION

58. Places of detention

Section

- 59. Child who escapes or is removed from place of detention
- 60. Offence of removing or helping a child to escape from place of detention

CHAPTER 3

PROBATION HOSTELS

- 61. Probation hostels
- 62. Child under ten years of age not to be sent to probation hostel
- 63. Child who escapes or is removed from probation hostel
- 64. Offence of removing or helping a child to escape from probation hostel

CHAPTER 4

APPROVED SCHOOLS

- 65. Approved schools
- 66. Child under ten years of age not to be sent to approved school
- 67. When a child can be sent to approved school
- 68. Approved school order to be delivered to the authority, *etc.*, who conveys child to the school
- 69. Further detention in approved school beyond period of order
- 70. Aftercare of child released from approved school
- 71. Escape from approved school, *etc.*, or failure to return to approved school after expiry of leave, *etc.*
- 72. Offence of removing or helping a child to escape from approved school

CHAPTER 5

HENRY GURNEY SCHOOLS

- 73. Henry Gurney Schools
- 74. Child under fourteen years of age not to be sent to Henry Gurney School
- 75. When a child can be sent to Henry Gurney School

Section

CHAPTER 6

SPECIAL PROVISIONS IN RELATION TO PLACES OF
SAFETY, PLACES OF REFUGE, APPROVED SCHOOLS
AND HENRY GURNEY SCHOOLS

76. Power in respect of persons of eighteen years but under twenty-one years of age
77. Power of Minister to remove person undergoing imprisonment to Henry Gurney School
78. Power of Minister to remove child undergoing imprisonment to approved school or Henry Gurney School
79. Power to substitute term of detention to term of imprisonment
80. Transfer of child from one place of safety or place of refuge to another place of safety or place of refuge

CHAPTER 7

MISCELLANEOUS

81. Child or person detained to be subject to regulations
82. Board of Visitors

PART X

CRIMINAL PROCEDURE IN COURT FOR CHILDREN

CHAPTER 1

CHARGE, BAIL, *ETC.*

83. Trials of children to be in conformity with this Act
84. Bail
85. Separation of child from adult in police stations or Courts
86. Custody of child not discharged on bail after arrest
87. Submission of information by police officer after arrest

CHAPTER 2

TRIALS

88. Parent or guardian required to attend
89. Parents or guardian may be required to withdraw
90. Procedure in Court For Children

CHAPTER 3

POWERS OF THE COURT FOR CHILDREN AT THE
CONCLUSION OF THE TRIAL

Section

91. Powers of Court For Children on proof of offence
92. Manner of executing whipping
93. Parent or guardian to execute bond
94. Power to order parent or guardian to pay fine, *etc.*, instead of child
95. Appeals
96. Restrictions on order of imprisonment
97. Death

CHAPTER 4

PROBATION

98. When probation may be ordered
99. Failure to comply with probation order
100. Commission of further offence
101. Effects of probation
102. Amendment of probation order
103. Discharge of probation order
104. Court to give copies of amending or discharging order to probation officer

PART XI

IN THE CARE OF FIT AND PROPER PERSON

105. Child placed in the care of fit and proper person
106. Child who escapes or is removed from the care of fit and proper person
107. Offence of removing or helping a child to escape from the care of fit and proper person

PART XII

CONTRIBUTION ORDERS

108. Contribution by parent or guardian or other person

PART XIII

INVESTIGATION, ARREST, SEARCH, SEIZURE, *ETC.*

Section

- 109. Power of investigation
- 110. Power to arrest without warrant
- 111. Search by warrant
- 112. Search without warrant
- 113. Power to examine person
- 114. Inspection
- 115. Obstruction
- 116. Protection of informers

PART XIV

MISCELLANEOUS

- 117. Power of Court For Children conferred on High Court
- 118. Register
- 119. Contents of Register
- 120. Access to Register
- 121. Offence in respect of Register
- 122. Certificate of Registrar to be evidence
- 123. Protection against suit and legal proceedings
- 124. Public servant
- 125. General penalty
- 126. Institution and conduct of prosecution
- 127. Service of document
- 128. Power to make regulations

PART XV

SAVINGS AND TRANSITIONAL PROVISIONS

- 129. Interpretation
- 130. Repeal
- 131. References to Juvenile Court, *etc.*

Section

- 132. Continuance of Council, *etc.*
- 133. Continuance of rules, *etc.*
- 134. Institutions established or appointed
- 135. Prevention of anomalies

FIRST SCHEDULE

SECOND SCHEDULE

LAWS OF MALAYSIA**Act 611****CHILD ACT 2001**

An Act to consolidate and amend the laws relating to the care, protection and rehabilitation of children and to provide for matters connected therewith and incidental thereto.

[1 August 2002, P.U. (B) 229/2002]

RECOGNIZING that the country's vision of a fully developed nation is one where social justice and moral, ethical and spiritual developments are just as important as economic development in creating a civil Malaysian society which is united, progressive, peaceful, caring, just and humane:

RECOGNIZING that a child is not only a crucial component of such a society but also the key to its survival, development and prosperity:

ACKNOWLEDGING that a child, by reason of his physical, mental and emotional immaturity, is in need of special safeguards, care and assistance, after birth, to enable him to participate in and contribute positively towards the attainment of the ideals of a civil Malaysian society:

RECOGNIZING every child is entitled to protection and assistance in all circumstances without regard to distinction of any kind, such as race, colour, sex, language, religion, social origin or physical, mental or emotional disabilities or any other status:

ACKNOWLEDGING the family as the fundamental group in society which provides the natural environment for the growth, support and well-being of all its members, particularly children, so that they may develop in an environment of peace, happiness, love and understanding in order to attain the full confidence, dignity and worth of the human person:

RECOGNIZING the role and responsibility of the family in society, that they be afforded the necessary assistance to enable them to fully assume their responsibilities as the source of care, support, rehabilitation and development of children in society:

NOW, THEREFORE, **ENACTED** by the Parliament of Malaysia as follows:

PART I

PRELIMINARY

Short title, application and commencement

1. (1) This Act may be cited as the Child Act 2001.

(2) This Act applies throughout Malaysia.

(3) This Act comes into operation on a date to be appointed by the Minister by notification in the *Gazette*.

Interpretation

2. (1) In this Act, unless the context otherwise requires—

“member of the family” includes a parent or a guardian, or a member of the extended family, who is a household member;

“household member” means a person who ordinarily resides in the same household as the child;

“probation hostel” means a hostel established or appointed under section 61 as a place of residence for children required to reside there under Part X;

“Register” means the Register kept and maintained under section 118;

“prescribed” means prescribed by regulations made under section 128;

“hospital” means any Government hospital or any teaching hospital of a University;

“foster parent” means a person, not being a parent or a relative of a child—

- (a) to whom the care, custody and control of a child has been given by order of a Court under paragraph 30(1)(e);
or

- (b) permitted by the Protector under section 35 or 37, as the case may be, to receive a child into his care, custody and control;

“Child Welfare Committee”, in relation to a State, means a Committee appointed by the Minister to oversee the welfare of persons coming within the purview of Part X and to assist the probation officer in any district or area;

“grave crime” includes—

- (a) the offences of murder, culpable homicide not amounting to murder or attempted murder;
- (b) all offences under the Firearms (Increased Penalties) Act 1971 [*Act 37*];
- (c) all offences under the Internal Security Act 1960 [*Act 82*] punishable with imprisonment for life or with death;
- (d) all offences under the Dangerous Drugs Act 1952 [*Act 234*] punishable with imprisonment for more than five years or with death; and
- (e) all offences under the Kidnapping Act 1961 [*Act 365*];

“child”—

- (a) means a person under the age of eighteen years; and
- (b) in relation to criminal proceedings, means a person who has attained the age of criminal responsibility as prescribed in section 82 of the Penal Code [*Act 574*];

“probationer” means a child for the time being under supervision by virtue of a probation order;

“extended family”, in relation to a person, means persons related by consanguinity, affinity or adoption to that person;

“Director General” means the Director General of Social Welfare;

“probation report” means a report prepared by a probation officer under subsection 90(13);

“Board of Visiting Justices” means the Board of Visiting Justices appointed under section 64 of the Prison Act 1995 [*Act 537*];

“Board of Visitors” means the Board of Visitors appointed by the Minister under section 82;

“Court” means the Court For Children or any other Court, as the case may require;

“Court For Children” means the Court For Children constituted under section 11;

“Magistrate’s Court” means a Court of a Magistrate of the First Class;

“Supervising Court” means the Court For Children for the district or area in which a probationer is required to reside;

“Magistrate” means a Magistrate of the First Class;

“Council” means the Co-ordinating Council for the Protection of Children established under section 3;

“Minister” means the Minister or Ministers for the time being charged with the responsibility for the matter or matters in connection with which the reference to the “Minister” is made, acting individually or jointly or in consultation, as the case may require;

“Child Protection Team” means a team established by the Council under section 7;

“probation officer” means a probation officer appointed under section 10;

“senior police officer” has the same meaning as in the Police Act 1967 [*Act 344*];

“Social Welfare Officer” means any Social Welfare Officer in the Ministry or Department responsible for welfare services and includes any Assistant Social Welfare Officer;

“medical officer” means a registered medical practitioner in the service of the Government and includes a registered medical practitioner in any teaching hospital of a University;

“police officer” has the same meaning as in the Police Act 1967;

“prostitution” means the act of a person offering that person’s body for sexual gratification for hire whether in money or in kind; and “prostitute” shall be construed accordingly;

“Protector” means—

- (a) the Director General;
- (b) the Deputy Director General;
- (c) a Divisional Director of Social Welfare, Department of Social Welfare;
- (d) the State Director of Social Welfare of each of the States;
- (e) any Social Welfare Officer appointed under section 8;

“owner”—

- (a) in relation to any place—
 - (i) means the registered proprietor of the place;
 - (ii) the lessee, including a sublessee, of the place whether registered or otherwise; or
 - (iii) the agent or trustee of any of the persons described in subparagraphs (i) and (ii); and
- (b) in relation to any conveyance, means the registered owner of the conveyance;

“Registrar” means the Registrar of Children in Need of Protection appointed under subsection 9(2) and includes the Registrar General;

“Registrar General” means the Registrar General of Children in Need of Protection appointed under subsection 9(1);

“registered medical practitioner” means a medical practitioner registered under the Medical Act 1971 [*Act 50*];

“conveyance” includes an aircraft, a ship, a boat or a vessel whether afloat or not, and any vehicle;

“child care provider” means a person who looks after one or more children for valuable consideration for any period of time;

“occupier”—

(a) means a person in occupation or control of any place; and

(b) in relation to places different parts of which are occupied by different persons, means the respective person in occupation or control of each part;

“guardian”, in relation to a child, includes any person who, in the opinion of the Court For Children having cognizance of any case in relation to the child or in which the child is concerned, has for the time being the charge of or control over the child;

“probation order” means a probation order made under section 98;

“Henry Gurney School order” means an order made by a Court For Children sending a child aged fourteen years or above to a Henry Gurney School;

“approved school order” means an order made by a Court For Children sending a child to an approved school;

“contribution order” means a contribution order made under section 108;

“centre” means a privately-owned shelter or institution approved by the Minister, set up for the care, protection and rehabilitation of children;

“brothel” means any place occupied or used by any two or more persons whether at the same time or at different times for the purpose of prostitution;

“Henry Gurney School” means a school—

- (a) established or appointed under section 73; and
- (b) under the direction and control of the Director General of Prisons and approved by the Minister for the education, training and detention of persons to be sent there in pursuance of Part X;

“approved school” means a school established or appointed under section 65 and includes a centre;

“place” includes any building, house, office, shop, flat, room or cubicle or part thereof, any open or enclosed space, and any conveyance;

“place of assignment” means any place where communication is established with any child either directly or through intermediary for purposes of prostitution;

“place of refuge” means any place of refuge established or appointed under section 55;

“place of safety” means any place of safety established or appointed under section 54;

“place of detention”—

- (a) means any place of detention established or appointed under section 58; and
- (b) includes accommodation in a police station, police cell or lock-up, separate or apart from adult offenders;

“probation period” means the period for which a probationer is placed under supervision by a probation order;

“Deputy Director General” means the Deputy Director General of Social Welfare.

(2) In this Act, unless the context otherwise requires, the Federal Territory of Kuala Lumpur and the Federal Territory of Labuan shall each be regarded as a State.

PART II

CO-ORDINATING COUNCIL FOR THE PROTECTION
OF CHILDREN**Establishment of the Co-ordinating Council for the Protection
of Children**

3. (1) There shall be established a Council which shall be known as the “Co-ordinating Council for the Protection of Children”.

(2) The Council shall—

- (a) be responsible for advising the Minister on all aspects of child protection;
- (b) design an efficient and effective management system throughout Malaysia incorporating information channels for reporting cases of children in need of protection;
- (c) recommend services that are specifically oriented to meet the needs of persons, children and families in need of child protection services;
- (d) co-ordinate the various resources of any Government Department which is involved with child protection;
- (e) develop programmes to educate the public in the prevention of child abuse and neglect;
- (f) advise on the management, operation and practice of Child Protection Teams throughout Malaysia;
- (g) advise on the development of training programmes for members of Child Protection Teams throughout Malaysia;
- (h) resolve any conflict that may arise within Child Protection Teams; and
- (i) perform such other functions as may be prescribed by regulations made under this Act.

Membership of Council

4. (1) The Council shall consist of the following members:

- (a) the Director General who shall be the Chairman;

- (b) the Deputy Director General who shall be the Deputy Chairman;
- (c) a representative from the Ministry responsible for child protection;
- (d) a representative from the Ministry responsible for health;
- (e) a representative from the Ministry responsible for education;
- (f) a representative from the Ministry responsible for human resources;
- (g) a representative from the Ministry responsible for information;
- (h) a representative of the Attorney General;
- (i) a representative of the Inspector General of Police;
- (j) a representative from the Prison Department;
- (k) two representatives from the Department of Social Welfare;
- (l) a representative from the ministry, in the State of Sabah, charged with the responsibility for welfare services;
- (m) a representative from the ministry, in the State of Sarawak, charged with the responsibility for welfare services;
- (n) not more than seven persons with appropriate experience, knowledge and expertise on matters relating to the welfare and development of children including any person qualified to advise on relevant indigenous, ethnic, cultural or religious factors, to be appointed by the Minister; and
- (o) a Registrar who shall be the Secretary.

(2) Each member of the Council appointed under paragraph (1)(m) shall, unless he sooner resigns, hold office for a period not exceeding three years and is eligible for reappointment.

Meeting of Council

5. (1) The Council shall meet at least four times in a year at such time and place as the Chairman may determine.

(2) Every meeting of the Council shall be presided over—

(a) by the Chairman;

(b) in the absence of the Chairman, by the Deputy Chairman;
or

(c) in the absence of the Chairman and Deputy Chairman, by a member elected by the members present from amongst themselves.

(3) Seven members of the Council shall form a quorum at any meeting of the Council.

(4) If on any question to be determined there is an equality of votes, the Chairman, or the Deputy Chairman or the member referred to in paragraph (2)(c) if he is presiding over the meeting, shall have a casting vote in addition to his deliberative vote.

(5) Subject to this Act, the Council may determine its own procedure.

Establishment of committees

6. (1) The Council may establish such committees as it deems necessary or expedient to assist it in the performance of its functions under this Act.

(2) A committee established under subsection (1)—

(a) shall be chaired by a member of the Council;

(b) shall conform to and act in accordance with any direction given to it by the Council; and

(c) may determine its own procedure.

(3) Members of the committees established under subsection (1) may be appointed from amongst members of the Council or such other persons as the Council thinks fit.

(4) A member of a committee shall hold office for such term as may be specified in his letter of appointment and is eligible for reappointment.

(5) The Council may revoke the appointment of any member of a committee without assigning any reason therefor.

(6) A member of a committee may, at any time, resign by giving notice in writing to the chairman of the committee.

(7) The Council may, at any time, discontinue or alter the constitution of a committee.

(8) A committee shall hold its meetings at such times and places as the chairman of the committee may determine.

(9) A committee may invite any person to attend a meeting of the committee for the purpose of advising it on any matter under discussion but that person shall not be entitled to vote at the meeting.

Establishment of Child Protection Teams

7. (1) The Council shall establish throughout Malaysia groups of persons, each group to be known as a “Child Protection Team”, for the purpose of co-ordinating locally-based services to families and children if children are or are suspected of being in need of protection.

(2) A Child Protection Team shall consist of the following members:

- (a) a Protector to be named by the Council on the advice of the Director General, who shall be the chairman;
- (b) a medical officer; and
- (c) a senior police officer.

(3) A Child Protection Team shall have the authority to co-opt from time to time such other persons as it may reasonably require to assist it in the performance of its functions and duties or as the circumstances of each case may require, including any person qualified to advise on relevant indigenous, ethnic, cultural or religious factors.

PART III

APPOINTMENT OF PROTECTOR, *ETC.***Appointment and powers of Protectors**

8. (1) The Minister may, by notification in the *Gazette*, appoint such number of Social Welfare Officers to exercise the powers and perform the duties of a Protector under this Act subject to such conditions as may be specified in the notification.

(2) A Protector—

- (a) shall have the power of a Magistrate in respect of the taking of evidence at any inquiry held by him under this Act;
- (b) shall furnish to the Court a copy of the notes of such evidence when called upon to do so by order of the Court; and
- (c) shall not be compellable in any judicial proceedings to answer any question as to the grounds of his decision or belief—
 - (i) in any case dealt with by him under this Act; or
 - (ii) as to anything which came to his knowledge in any inquiry made by him as Protector.

(3) Every order or summons purporting to be issued by and under the hand and seal of the Protector in pursuance of this Act shall be received in evidence in any Court without further proof and shall be *prima facie* evidence of the facts stated in such order or summons.

(4) All acts done in pursuance of any order or summons referred to in subsection (3) shall be deemed to have been authorized by law.

Appointment of Registrar General and Registrar

9. (1) The Minister may appoint a Social Welfare Officer to be the Registrar General of Children in Need of Protection for the purposes of this Act.

(2) The Minister may appoint such number of public officers as he deems necessary by name or by office to be Registrars of Children in Need of Protection.

(3) The Registrar General shall have the general supervision and control of—

- (a) Registrars appointed under subsection (2); and
- (b) the registration of children in need of protection under this Act.

Appointment of probation officers

10. (1) The Minister may, by notification in the *Gazette*, appoint such number of Social Welfare Officers as he deems necessary to be probation officers throughout Malaysia or any part of Malaysia.

(2) A probation officer when acting under a probation order shall be subject to the control of the Supervising Court.

(3) In this section, “Social Welfare Officers” includes Social Welfare Assistants.

PART IV

COURTS FOR CHILDREN

Constitution and jurisdiction of Court For Children

11. (1) Courts constituted in accordance with this Act and sitting for the purpose of—

- (a) hearing, determining or disposing of any charge against a child; or
- (b) exercising any other jurisdiction conferred or to be conferred on Courts For Children by or under this Act or by any other written law,

shall be known as the “Courts For Children”.

(2) A Court For Children shall consist of a Magistrate who, in the exercise of his functions as a Court For Children except when making an order under subsection 39(4), 42(4), 84(3) or 86(1), as the case may require, shall be assisted by two advisers to be appointed by the Minister from a panel of persons resident in the State.

(3) One of the two advisers mentioned in subsection (2) shall be a woman.

(4) The functions of the advisers are—

(a) to inform and advise the Court For Children with respect to any consideration affecting the order made upon a finding of guilt or other related treatment of any child brought before it; and

(b) if necessary, to advise the parent or guardian of the child.

(5) A Court For Children shall have jurisdiction to try all offences except offences punishable with death.

(6) Except as modified or extended by this Part, the Criminal Procedure Code [*Act 593*] shall apply to Courts For Children as if Courts For Children were Magistrates' Courts.

Place of sitting and persons who may be present in Court For Children

12. (1) A Court For Children shall, if practicable, sit—

(a) either in a different building or room from that in which sittings of Courts other than Courts For Children are held; or

(b) on different days from those on which sittings of those other Courts are held.

(2) If a Court For Children sits in the same building as other Courts, the Court For Children shall have a different entrance and exit from those of the other Courts to enable children to be brought to and from the Court For Children with privacy.

(3) No person shall be present at any sitting of a Court For Children except—

- (a) members and officers of the Court;
- (b) the children who are parties to the case before the Court, their parents, guardians, advocates and witnesses, and other persons directly concerned in that case; and
- (c) such other responsible persons as may be determined by the Court.

Period specified in any order made by Court For Children not to extend beyond the date child attains the age of eighteen years

13. Except as specified in this Act, any period specified in any order made by a Court For Children under this Act shall not extend beyond the date on which the child to whom the order relates attains the age of eighteen years.

Court For Children may order detention, etc., to extend beyond the date child attains the age of eighteen years

14. (1) Notwithstanding anything in this Act or any written law or any rule of law, a Court For Children may, if the Court finds that circumstances warrant it, make an order relating to—

- (a) the detention of a child in a place of detention, probation hostel, approved school or Henry Gurney School, approved institution or centre;
- (b) the supervision of a child by a Social Welfare Officer or probation officer, as the case may be; or
- (c) any probation period,

which has the effect of extending the period of such detention, supervision or probation beyond the date on which the child attains the age of eighteen years.

(2) The order referred to in subsection (1) shall be complied with by the child and all parties to whom the order relates so long as the order remains in force and have effect.

Restrictions on media reporting and publication

15. (1) Notwithstanding any written law to the contrary, any mass media report regarding—

- (a) any step taken against a child concerned or purportedly concerned in any criminal act or omission, be it at the pre-trial, trial or post-trial stage;
- (b) any child in respect of whom custody is taken under Part V;
- (c) any child in respect of whom any of the offences specified in the First Schedule has been or is suspected to have been committed; or
- (d) any proceedings under Part VI,

shall not reveal the name, address or educational institution, or include any particulars calculated to lead to the identification of any child so concerned either as being the person against or in respect of whom action is taken or as being a witness to the action.

(2) A picture of—

- (a) any child concerned in any of the matters mentioned in subsection (1); or
- (b) any other person, place or thing which may lead to the identification of any child so concerned,

shall not be published in any newspaper or magazine or transmitted through any electronic medium.

(3) The Court For Children, in any case—

- (a) may, if the Court For Children is satisfied that it is in the interest of justice to do so; and
- (b) shall, in the case of an application by or with the authority of a Protector,

dispense with the requirements of this section to such an extent as the Court may deem expedient.

(4) Any person who contravenes subsection (1) or (2) commits an offence and shall on conviction be liable to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding five years or to both.

(5) For the purposes of this section, “transmit” includes broadcast by radio or television.

Presumption as to age

16. (1) If in a charge for an offence triable under this Act—

- (a) it is alleged that the person who committed the offence was under or had attained any specified age; and
- (b) that person appears to the Court For Children to have been at the date of the commission of the alleged offence under or to have attained the specified age, as the case may be,

he shall, for the purposes of this Act, be presumed at that date to have been under or to have attained that age, as the case may be, and any order made therein shall not be invalidated by any subsequent proof that the age has been incorrectly stated.

(2) If the Court For Children is in doubt as to the exact age of the person who is alleged to have committed an offence, the certificate of a medical officer to the effect that, in his opinion, the person has or has not attained a specified age may be given in evidence, and the Court For Children shall declare that person’s age for the purposes of this Act.

(3) The age so declared by the Court For Children under subsection (2) shall be deemed to be the true age of that person, unless and until the contrary is proved.

PART V

CHILDREN IN NEED OF CARE AND PROTECTION

CHAPTER 1

GENERAL

Meaning of child in need of care and protection

17. (1) A child is in need of care and protection if—

- (a) the child has been or there is substantial risk that the child will be physically injured or emotionally injured or

sexually abused by his parent or guardian or a member of his extended family;

- (b) the child has been or there is substantial risk that the child will be physically injured or emotionally injured or sexually abused and his parent or guardian, knowing of such injury or abuse or risk, has not protected or is unlikely to protect the child from such injury or abuse;
- (c) the parent or guardian of the child is unfit, or has neglected, or is unable, to exercise proper supervision and control over the child and the child is falling into bad association;
- (d) the parent or guardian of the child has neglected or is unwilling to provide for him adequate care, food, clothing and shelter;
- (e) the child—
 - (i) has no parent or guardian; or
 - (ii) has been abandoned by his parent or guardian and after reasonable inquiries the parent or guardian cannot be found,

and no other suitable person is willing and able to care for the child;

- (f) the child needs to be examined, investigated or treated—
 - (i) for the purpose of restoring or preserving his health; and
 - (ii) his parent or guardian neglects or refuses to have him so examined, investigated or treated;
- (g) the child behaves in a manner that is, or is likely to be, harmful to himself or to any other person and his parent or guardian is unable or unwilling to take necessary measures to remedy the situation or the remedial measures taken by the parent or guardian fail;

- (h) there is such a conflict between the child and his parent or guardian, or between his parents or guardians, that family relationships are seriously disrupted, thereby causing him emotional injury;
- (i) the child is a person in respect of whom any of the offences specified in the First Schedule or any offence of the nature described in sections 31, 32 and 33 has been or is suspected to have been committed and his parent or guardian—
 - (i) is the person who committed such offence or is suspected to have committed such offence; or
 - (ii) has not protected or is unlikely to protect him from such offence;
- (j) the child is—
 - (i) a member of the same household as the child referred to in paragraph (i); or
 - (ii) a member of the same household as the person who has been convicted of the offence referred to in paragraph (i),and appears to be in danger of the commission upon or in respect of him of a similar offence and his parent or guardian—
 - (aa) is the person who committed or is suspected to have committed the offence;
 - (bb) is the person who is convicted of such offence; or
 - (cc) is unable or unwilling to protect him from such offence;
- (k) the child is allowed to be on any street, premises or place for the purposes of—
 - (i) begging or receiving alms, whether or not there is any pretence of singing, playing, performing or offering anything for sale; or
 - (ii) carrying out illegal hawking, illegal lotteries, gambling or other illegal activities detrimental to the health and welfare of the child.

- (2) For the purposes of this Part, a child is—
- (a) physically injured if there is substantial and observable injury to any part of the child's body as a result of the non-accidental application of force or an agent to the child's body that is evidenced by, amongst other things, a laceration, a contusion, an abrasion, a scar, a fracture or other bone injury, a dislocation, a sprain, haemorrhaging, the rupture of a viscus, a burn, a scald, the loss or alteration of consciousness or physiological functioning or the loss of hair or teeth;
 - (b) emotionally injured if there is substantial and observable impairment of the child's mental or emotional functioning that is evidenced by, amongst other things, a mental or behavioural disorder, including anxiety, depression, withdrawal, aggression or delayed development;
 - (c) sexually abused if he has taken part, whether as a participant or an observer, in any activity which is sexual in nature for the purposes of—
 - (i) any pornographic, obscene or indecent material, photograph, recording, film, videotape or performance; or
 - (ii) sexual exploitation by any person for that person's or another person's sexual gratification.

CHAPTER 2

TEMPORARY CUSTODY AND MEDICAL EXAMINATION AND TREATMENT

Taking a child into temporary custody

18. Any Protector or police officer who is satisfied on reasonable grounds that a child is in need of care and protection may take the child into temporary custody, unless the Protector or police officer is satisfied that—

- (a) the taking of proceedings in relation to the child is undesirable in the best interests of the child; or
- (b) the proceedings are about to be taken by some other person.

Production before Court For Children

19. (1) Subject to section 20, every child who is taken into temporary custody under section 18 shall be brought before a Court For Children within twenty-four hours exclusive of the time necessary for the journey from the place the child was so taken into custody to the Court For Children.

(2) If it is not possible to bring a child before a Court For Children within the time specified in subsection (1), the child shall be brought before a Magistrate who may direct that the child be placed in—

- (a) a place of safety; or
- (b) the care of a fit and proper person,

until such time as the child can be brought before a Court For Children.

(3) If a child is placed in a place of safety or in the care of a fit and proper person under subsection (2)—

- (a) the person in charge of the place of safety or such fit and proper person shall have the like control over, and responsibility for the maintenance of, the child as the parent of the child would have had; and
- (b) the child shall continue in the care of the person referred to in paragraph (a) notwithstanding that the child is claimed by his parent or guardian or any other person.

(4) A Protector who takes a child into temporary custody under this section shall, immediately upon such taking, cause the parent or guardian of the child to be notified of such taking.

(5) A police officer who takes a child into temporary custody under this section shall, immediately upon such taking, notify the Protector of such taking.

Child in need of medical examination or treatment

20. (1) If a Protector or police officer who takes a child into temporary custody under section 18 is of the opinion that the child is in need of medical examination or treatment, the Protector or

police officer may, instead of bringing the child before a Court For Children or Magistrate, as the case may be, present the child before a medical officer.

(2) If at the time of being taken into custody a child is a patient in a hospital, the Protector or police officer who takes the child into custody may leave the child in the hospital.

(3) If a Protector or police officer does not take a child into temporary custody under section 18 but he is satisfied on reasonable grounds that the child is in need of medical examination or treatment, he may direct in writing the person who appears to him to have the care of the child for the time being to immediately take the child to a medical officer.

(4) If the person referred to in subsection (3) fails to comply within forty-eight hours with a direction made under that subsection, a Protector or police officer may take the child into temporary custody for the purpose of presenting the child before a medical officer.

Medical examination and treatment

21. A medical officer before whom a child is presented under subsection 20(1) or (4)—

- (a) shall conduct or cause to be conducted an examination of the child;
- (b) may, in examining the child and if so authorized by a Protector or police officer, administer or cause to be administered such procedures and tests as may be necessary to diagnose the child's condition; and
- (c) may provide or cause to be provided such treatment as he considers necessary as a result of the diagnosis.

Authorization of hospitalization

22. If the medical officer who examines a child under section 21 is of the opinion that the hospitalization of the child is necessary for the purposes of medical care or treatment, a Protector or police officer may authorize the child to be hospitalized.

Control over hospitalized children

23. If a child is hospitalized under section 22, the Director General shall have the like control over, and responsibility for the maintenance of, that child as a person in charge of a place of safety would have had if the child had been placed in that place of safety.

Authorization of medical treatment

24. (1) If, in the opinion of a medical officer, the child referred to in section 21 requires treatment for a minor illness, injury or condition, a Protector or police officer may authorize such treatment.

(2) If, in the opinion of a medical officer, the child referred to in section 21 is suffering from a serious illness, injury or condition or requires surgery or psychiatric treatment, a Protector or police officer—

- (a) shall immediately notify or take reasonable steps to notify and consult the parent or guardian of the child or any person having authority to consent to such treatment; and
- (b) may, with the written consent of the parent or guardian or such person, authorize such medical or surgical or psychiatric treatment as may be considered necessary by a medical officer.

(3) If a medical officer has certified in writing that there is immediate risk to the health of a child, a Protector may authorize, without obtaining the consent referred to in subsection (2), such medical or surgical or psychiatric treatment as may be considered necessary by the medical officer but only under any of the following circumstances:

- (a) that the parent or guardian of the child or any person having authority to consent to such treatment has unreasonably refused to give, or abstained from giving, consent to such treatment;
- (b) that the parent or guardian or the person referred to in paragraph (a) is not available or cannot be found within a reasonable time; or

- (c) the Protector believes on reasonable grounds that the parent or guardian or the person referred to in paragraph (a) has ill-treated, neglected, abandoned or exposed, or sexually abused, the child.

Steps to be taken after medical examination or treatment

25. (1) A child who is taken into custody under section 18 and is medically examined or treated under section 21 shall be brought before a Court For Children within twenty-four hours—

- (a) of the completion of such examination or treatment; or
- (b) if the child is hospitalized, of his discharge from the hospital.

(2) If it is not possible to bring the child before a Court For Children within the time specified in subsection (1), the child shall be brought before a Magistrate who may direct that the child be placed in—

- (a) a place of safety; or
- (b) the care of a fit and proper person,

until such time as the child can be brought before a Court For Children.

(3) A child who—

- (a) is taken into custody under subsection 20(4); and
- (b) subsequently undergoes medical examination or treatment,

shall be returned to the person from whose care the child was taken—

- (aa) upon the completion of such examination or treatment; or
- (bb) if the child is hospitalized, upon his discharge from the hospital.

No liability incurred for giving authorization

26. (1) If a child is examined or treated pursuant to section 21 or 24—

- (a) the Protector or police officer who authorizes such examination or treatment;

- (b) the medical officer who examines or treats the child;
and
- (c) all persons acting in aid of the medical officer,

shall not incur any liability at law by reason only that a child is examined or treated pursuant to that section.

(2) Nothing contained in subsection (1) relieves a medical officer from liability in respect of the examination or treatment of a child which liability he would have been subject to had the examination or treatment been carried out or administered with the consent of the parent or guardian of the child or person having authority to consent to the examination or treatment.

Duty of medical officer or medical practitioner

27. (1) If a medical officer or a registered medical practitioner believes on reasonable grounds that a child he is examining or treating is physically or emotionally injured as a result of being ill-treated, neglected, abandoned or exposed, or is sexually abused, he shall immediately inform a Protector.

(2) Any medical officer or registered medical practitioner who fails to comply with subsection (1) commits an offence and shall on conviction be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding two years or to both.

(3) If the registered medical practitioner referred to in subsection (1) is a medical officer, he may take the child referred to in that subsection into temporary custody until such time as the temporary custody of the child is assumed by a Protector or police officer.

Duty of member of the family

28. (1) If any member of the family of a child believes on reasonable grounds that the child is physically or emotionally injured as a result of being ill-treated, neglected, abandoned or exposed, or is sexually abused, he shall immediately inform a Protector.

(2) Any member of the family who fails to comply with subsection (1) commits an offence and shall on conviction be released on a bond on conditions to be determined by the Court.

(3) Any member of the family who fails to comply with any of the conditions of the bond provided for in subsection (2) commits an offence and shall on conviction be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding two years or to both.

Duty of child care provider

29. (1) If a child care provider believes on reasonable grounds that a child is physically or emotionally injured as a result of being ill-treated, neglected, abandoned or exposed, or is sexually abused, he shall immediately inform a Protector.

(2) Any child care provider who fails to comply with subsection (1) commits an offence and shall on conviction be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding two years or to both.

Powers of Court For Children

30. (1) If a Court For Children is satisfied that any child brought before it under section 19 or 25 is a child in need of care and protection, the Court For Children may—

- (a) order his parent or guardian to execute a bond to exercise proper care and guardianship for a period specified by the Court For Children;
- (b) make an order placing the child in the custody of a fit and proper person for a period specified by the Court For Children;
- (c) without making any other order or in addition to an order made under paragraph (a) or (b), make an order placing the child under the supervision of—
 - (i) a Protector; or
 - (ii) some other person appointed for the purpose by the Court For Children,

for a period specified by the Court For Children;

- (d) make an order placing the child in a place of safety for a period of three years from the date of the order or until he attains the age of eighteen years, whichever is the shorter; or
- (e) in the case of a child who has no parent or guardian or who has been abandoned as described in paragraph 17(1)(e), make an order placing the child in the care, custody and control of a foster parent found to be suitable by the Director General for a period of two years or until he attains the age of eighteen years, whichever is the shorter, and pending that, place the child in a place of safety.

(2) If the Court For Children makes an order under paragraph (1)(e), the Director General shall, in order to give effect to the order, immediately endeavour to place the child in the care, custody and control of a foster parent.

(3) If at any subsequent time the foster parent intends to return the child who has been placed in his care, custody and control under paragraph (1)(e), he shall report in person to the Protector and bring the child before the Protector, and the Protector shall place the child in a place of safety.

(4) If during the period mentioned in paragraph (1)(e) the parent or guardian of the child concerned has not claimed the child or made any appearance, the Court For Children may—

- (a) at the expiry of that period; and
- (b) if the Court is satisfied that reasonable steps have been taken by the Protector to trace the parent or guardian of the child,

make an order placing the child for adoption by the foster parent or any person who wishes to adopt the child and in any such case—

- (aa) the parent's or guardian's consent for the adoption of the child shall be dispensed with; and
- (bb) the Adoption Act 1952 [Act 257] (in the case of a child not professing the religion of Islam), the Registration of Adoptions Act 1952 [Act 253], Sabah Adoption Ordinance 1960 and Sarawak Adoption Ordinance [Cap 91] shall be construed accordingly.

(5) In determining what order to be made under subsection (1), the Court For Children shall treat the best interests of a child as the paramount consideration.

(6) Before making an order under subsection (1) or (4), the Court For Children shall consider and take into account any report prepared by the Protector which—

- (a) shall contain such information as to the family background, general conduct, home surrounding, school record and medical history of a child as may enable the Court For Children to deal with the case in the best interests of the child; and
- (b) may include any written report of a Social Welfare Officer, a registered medical practitioner or any other person whom the Court For Children thinks fit to provide a report on the child.

(7) In order to enable the Protector to prepare and submit the report referred to in subsection (6), the Court For Children may—

- (a) from time to time, adjourn the case for such periods not exceeding two months at a time; and
- (b) make in respect of the child, as an interim order having effect only during the period of adjournment, any order which the Court For Children could have made under subsection (1).

(8) A Court For Children may, in making any order under subsection (1), impose such conditions or give such directions as the Court may deem fit for the purpose of ensuring the safety and well-being of the child in respect of whom such order is made, and such conditions or directions may include the following:

- (a) that the parent or guardian of the child accompanied by the child shall attend interactive workshops organized at designated centres established for such purpose;

(b) if the child is placed at a place of safety, that the parent or guardian shall visit the child on a regular basis as determined by the Court For Children; or

(c) if the child is in an educational institution, that the parent or guardian shall consult with the child's teacher and head teacher or principal once a month.

(9) Any parent or guardian who fails to comply with any of the conditions imposed or directions given under subsection (8) commits an offence and shall on conviction be liable to a fine not exceeding five thousand ringgit.

(10) An order under subsection (1) shall not be made without giving the parent or guardian of the child an opportunity to attend and be heard.

(11) Notwithstanding subsection (10), an order under subsection (1) may be made if the Court For Children is satisfied on information given by a Protector that the parent or guardian of the child, having been required to attend, has failed to do so, or is not available or cannot be found within a reasonable time.

(12) If the Court For Children is not satisfied that a child brought before it under section 19 or 25 is in need of care and protection, the Court For Children shall order the child to be returned to the care and custody of his parent or guardian.

(13) A Court For Children may, on the application of—

(a) a Protector;

(b) the person in charge of a place of safety; or

(c) the parent or guardian of a child,

amend, vary or revoke any order made under this section—

(aa) if the Court For Children is satisfied that it is in the best interests of the child to do so; or

(bb) upon proof that the circumstances under which the order was made have changed after the making of the order.

CHAPTER 3

OFFENCES IN RELATION TO THE HEALTH AND
WELFARE OF CHILDREN**Ill-treatment, neglect, abandonment or exposure of children**

31. (1) Any person who, being a person having the care of a child—

- (a) abuses, neglects, abandons or exposes the child in a manner likely to cause him physical or emotional injury or causes or permits him to be so abused, neglected, abandoned or exposed; or
- (b) sexually abuses the child or causes or permits him to be so abused,

commits an offence and shall on conviction be liable to a fine not exceeding twenty thousand ringgit or to imprisonment for a term not exceeding ten years or to both.

(2) The Court—

- (a) shall, in addition to any punishment specified in subsection (1), order the person convicted of an offence under that subsection to execute a bond with sureties to be of good behaviour for such period as the Court thinks fit; and
- (b) may include in the bond executed under paragraph (a) such conditions as the Court thinks fit.

(3) If a person who is ordered to execute a bond to be of good behaviour under subsection (2) fails to comply with any of the conditions of such bond, he shall be liable to a further fine not exceeding ten thousand ringgit or to a further imprisonment for a term not exceeding five years or to both.

(4) A parent or guardian or other person legally liable to maintain a child shall be deemed to have neglected him in a manner likely to cause him physical or emotional injury if, being able to so provide from his own resources, he fails to provide adequate food, clothing, medical or dental treatment, lodging or care for the child.

(5) A person may be convicted of an offence against this section notwithstanding that—

- (a) suffering or injury to the health of the child in question or the likelihood of suffering or injury to the health of the child in question was avoided by the action of another person; or
- (b) the child in question has died.

Children not to be used for begging, etc.

32. Any person who causes or procures any child or, being a person having the care of a child, allows that child to be on any street, premises or place for the purposes of—

- (a) begging, receiving alms, whether or not there is any pretence of singing, playing, performing or offering anything for sale; or
- (b) carrying out illegal hawking, illegal lotteries, gambling or other illegal activities detrimental to the health and welfare of the child,

commits an offence and shall on conviction be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding two years or to both.

Offence to leave child without reasonable supervision

33. Any person who, being a parent or a guardian or a person for the time being having the care of a child, leaves that child—

- (a) without making reasonable provision for the supervision and care of the child;
- (b) for a period which is unreasonable having regard to all the circumstances; or
- (c) under conditions which are unreasonable having regard to all the circumstances,

commits an offence and shall on conviction be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding two years or to both.

CHAPTER 4

NOTIFICATION ON TAKING A CHILD INTO CARE,
CUSTODY OR CONTROL**Application and interpretation**

- 34.** (1) This Chapter shall not apply to the taking of a child—
- (a) into the care, custody or control of any person—
 - (i) in pursuance of an order of a Court of competent jurisdiction; or
 - (ii) by any Protector or police officer acting under this Act;
 - (b) as an inmate of a place of safety or of an orphanage, hospital, institution or centre—
 - (i) maintained by the Federal Government or by any of the State Governments; or
 - (ii) approved by the Minister;
 - (c) as a boarder at an educational institution registered under any written law relating to education; and
 - (d) who is regularly attending an educational institution registered under any written law relating to education into the custody of a friend or relative of his parent or guardian with the consent of his parent or guardian.
- (2) In this Chapter, “guardian” of a child means a person—
- (a) lawfully appointed by deed or will or by the order of a competent Court to be the guardian of the child; or
 - (b) who has lawfully adopted the child.

Notification of taking a child into care, custody or control

- 35.** (1) If a person takes a child into his care, custody or control—
- (a) that person; and

- (b) the person in whose care the child was at the time of such taking,

shall, not later than one week thereafter, notify the Protector of such taking.

(2) On receiving any notification under subsection (1), the Protector shall make such inquiry as he thinks fit as to—

- (a) the circumstances and the reasons for the taking; and
- (b) the suitability for that purpose of the person who has taken the child into his care, custody or control.

(3) If, after the inquiry referred to in subsection (2), the Protector deems it expedient to do so in the best interests of the child, he may either—

- (a) order that the child be returned to the care, custody or control of his parent or guardian or the person in whose care he was at the time of such taking; or
- (b) permit the taking of the child on such terms and conditions as the Protector may require.

(4) If the taking of a child by any person has been permitted under paragraph (3)(b) subject to any term or condition and default is made in complying with such term or condition, the Protector may by warrant under his hand order that the child—

- (a) be taken out of the care, custody or control of such person; and
- (b) be placed in a place of safety or in the custody of a relative or other fit and proper person on such terms and conditions as the Protector may require until the child attains the age of eighteen years or for any shorter period.

(5) For the purposes of this section, a “person” includes an institution or a centre—

- (a) not maintained by the Federal Government or by any of the State Governments; or
- (b) not approved by the Minister.

(6) A Protector shall, on receiving any notification under this section, record the particulars of such notification in a register in such form as may be prescribed.

(7) Any person who fails to comply with subsection (1) commits an offence and shall on conviction be liable to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding five years or to both.

Subsequent obligations

36. (1) If the taking of a child has been notified to and permitted by a Protector under section 35, the person who has taken the child shall, if at any subsequent time—

- (a) he intends to return the child to the care, custody or control of the parent or guardian of the child or any other person from whom the child was taken; or
- (b) without his knowledge or consent, the child has left his care, custody or control,

report in person to the Protector and shall, whenever practicable, bring or cause to be brought before the Protector the child and the parent or guardian of the child or any other person from whom the child was taken.

(2) On receiving a report under subsection (1), the Protector shall make a note of the report and shall if—

- (a) the child and the parent or guardian of the child or any other person from whom the child was taken are present at the time such report is received, return the child to his parent or guardian or such person, as the case may be; or
- (b) the parent or guardian of the child or any other person from whom the child was taken is not present at the time such report is received—
 - (i) take the child into temporary custody until he can be returned to his parent or guardian or such person; and

- (ii) immediately send written information to the last known place of residence of his parent or guardian or of such person.

(3) Any person who fails to comply with subsection (1) commits an offence and shall on conviction be liable to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding five years or to both.

Power of Protector to require child to be produced before him

37. (1) If a Protector has reason to believe that there is, within the area or the State within which he exercises jurisdiction, a child in respect of whose taking no notification has been made pursuant to section 35, he may, by summons under his hand addressed to the person who has or is believed to have the care, custody or control of the child, require that person to appear and to produce the child before him at the time and place specified in the summons for the purposes of an inquiry under subsection (4).

(2) If a person on whom a summons has been served under subsection (1) fails to produce the child at the time and place specified in the summons, the Protector may apply to a Magistrate for a search warrant under section 111 to be issued to search for the child and to produce him before the Protector.

(3) Any child named or described in such warrant may be temporarily—

- (a) detained in a place of safety; or
- (b) placed in the custody of a relative or other fit and proper person on such terms and conditions as the Protector may require,

until the Protector has completed his inquiry under this Chapter.

(4) The Protector shall make such inquiry as he thinks fit as to—

- (a) the circumstances and the reasons for the taking of the child referred to in subsection (1); and

(b) the suitability of the person who has taken the child into his care, custody or control.

(5) If, after the inquiry mentioned in subsection (4), the Protector deems it expedient in the best interests of the child, he may—

(a) order that the child be returned to the care, custody or control of his parent or guardian or the person in whose care he was at the time of such taking; or

(b) permit the taking of the child on such terms and conditions as the Protector may require.

(6) If the taking of a child by any person has been permitted under paragraph (5)(b) subject to any term or condition and default is made in complying with such term or condition, the Protector may by warrant under his hand order that the child—

(a) be taken out of the care, custody or control of such person; and

(b) be placed in a place of safety or in the custody of a relative or other fit and proper person on such terms and conditions as the Protector may require until the child attains the age of eighteen years or for any shorter period.

PART VI

CHILDREN IN NEED OF PROTECTION AND REHABILITATION

CHAPTER 1

GENERAL

Meaning of child in need of protection and rehabilitation

38. A child is in need of protection and rehabilitation if the child—

(a) is being induced to perform any sexual act, or is in any physical or social environment which may lead to the performance of such act;

- (b) lives in or frequents any brothel or place of assignation;
or
- (c) is habitually in the company or under the control of
brothel-keepers or procurers or persons employed or
directly interested in the business carried on in brothels
or in connection with prostitution.

Removal of a child to place of refuge

39. (1) Any Protector or police officer who is satisfied on reasonable grounds that a child is in need of protection and rehabilitation may order the child to be removed to a place of refuge and the child shall be temporarily detained in such place of refuge.

(2) Every child who is temporarily detained under subsection (1) shall be brought before a Court For Children within twenty-four hours exclusive of the time necessary for the journey from the place where the child was so removed to the Court For Children.

(3) If it is not possible to bring a child before a Court For Children within the time specified in subsection (1), the child shall be brought before a Magistrate who may direct that the child be placed in a place of refuge until such time as the child can be brought before a Court For Children.

(4) If the Court For Children is satisfied that a child brought before it is in need of protection and rehabilitation, the Court For Children may order the child to be detained in a place of refuge until—

- (a) an inquiry under section 40 to inquire into the circumstances of the child's case has been completed; and
- (b) a report of the inquiry has been submitted to the Court For Children by the Protector under subsection 40(2).

(5) If the Court For Children is not satisfied that a child brought before it is in need of protection and rehabilitation, the Court For Children shall order the child to be returned to the care and custody of his parent or guardian.

Orders upon completion of an inquiry

40. (1) An inquiry mentioned in subsection 39(4) shall be made by a Protector.

(2) A Protector shall complete the inquiry and submit the report of the inquiry to the Court For Children within a period not exceeding one month from the date of the admission of a child to a place of refuge under subsection 39(1).

(3) If after considering the report submitted under subsection (2) the Court For Children is satisfied that any child brought before it is a child in need of protection and rehabilitation the Court may, subject to the other provisions in this section—

- (a) order the child to be detained in a place of refuge for a period of three years from the date of the admission of the child into a place of refuge under subsection 39(1) and the order shall be an authority for his detention in a place of refuge;
- (b) make an order placing the child for such period not exceeding three years from the date of the order in the care of a person whether a relative or not who is willing and whom the Court For Children considers to be a fit and proper person to undertake the care of such child;
- (c) make an order requiring the parent or guardian of the child to execute a bond, with or without sureties, as the Court For Children may determine, for such period not exceeding three years from the date of the order subject to such conditions as the Court thinks fit for the proper care and guardianship of the child; or
- (d) make an order placing the child under the supervision of a Social Welfare Officer appointed for the purpose by the Court For Children, subject to such conditions as the Court thinks fit and for such period not exceeding three years from the date of the order.

(4) The order made under paragraph (3)(a) or (d) may have the effect of extending the period of such detention or supervision, as the case may be, beyond the date on which the child attains the age of eighteen years.

(5) In determining what order to be made under subsection (3), the Court For Children shall treat the best interests of a child as the paramount consideration.

(6) Notwithstanding paragraph (3)(a), the Board of Visitors of the place of refuge in which a child is being detained may reduce the period of detention of the child but no reduction shall be made which will have the effect of enabling the child to be released from the place of refuge within twelve months from the date of his admission into the place of refuge as specified in that paragraph, except by the authority of the Minister.

(7) The Court For Children shall, when making an order under paragraph (3)(a) or (d), order the parent or guardian of a child to execute a bond for the duration of the order with such conditions which may include—

- (a) in the case of paragraph (3)(a), regular visits to the place of refuge where the child is placed; and
- (b) in the case of paragraph (3)(d), ensuring that the child remains indoors within stipulated times.

(8) Any person who—

- (a) is ordered to execute a bond under subsection (3) or (7), as the case may be; and
- (b) fails to comply with any of the conditions of such bond,

commits an offence and shall on conviction be liable to a fine not exceeding ten thousand ringgit.

(9) Any child sent to a place of refuge for detention under paragraph (3)(a) shall, on the expiration of the period of his detention whether by—

- (a) effluxion of time; or
- (b) reason of any reduction made pursuant to subsection (6),

be placed under the supervision of a Social Welfare Officer or other person appointed by the Protector for such purpose.

(10) The period of supervision for the purpose of subsection (9) shall be determined by the Board of Visitors of the place of refuge on the recommendation of the Protector but shall not in any case exceed one year from the date of expiration of the period of detention of the child.

(11) The Minister may on the application of the child or his parent or guardian exempt the child from the application of subsection (9) if he is satisfied that the case warrants such exemption.

(12) Without prejudice to the powers of the Board of Visitors pursuant to subsection (6) the Court For Children may, on the application in writing made by—

- (a) a Protector;
- (b) the parent or guardian of the child to whom an order made under this section relates; or
- (c) the child,

amend, vary or revoke any order made under this section—

- (aa) if the Court For Children is satisfied that it is in the best interests of the child to do so; and
- (bb) upon proof that the circumstances under which the order was made have changed after the making of the order.

(13) An order under subsection (3) shall not be made without giving the parent or guardian of the child an opportunity to attend and be heard.

(14) Notwithstanding subsection (13), an order under subsection (3) may be made if the Court For Children is satisfied on information given by a Protector that the parent or guardian of the child, having been required to attend, has failed to do so, or is not available or cannot be found within a reasonable time.

Children in urgent need of protection

41. (1) Any child who is in urgent need of protection may on his own application in the prescribed form be received by the Protector into a place of refuge if the Protector is satisfied that the child is in urgent need of protection.

(2) A child is in urgent need of protection if there is reasonable cause to believe that—

- (a) the child is being threatened or intimidated for purposes of prostitution or for purposes of having sexual intercourse with another or for any immoral purpose;

- (b) the child is to be confined or detained by another in contravention of this Part;
- (c) an offence against this Part is being or likely to be committed in respect of the child; or
- (d) if the child is a female, that she is pregnant out of wedlock.

(3) Subject to subsections (4) and (5), and if circumstances warrant it, the person in charge of any place of refuge may receive into the place of refuge any child who—

- (a) is in urgent need of protection; and
- (b) makes an application under this section to the person in charge.

(4) If the person in charge of a place of refuge receives any child under subsection (3), that child shall be brought before a Protector within twenty-four hours of his admission into the place of refuge with a full report of the circumstances.

(5) A child admitted under this section is permitted to reside in the place of refuge only so long as the Protector is satisfied that the child is in urgent need of protection under this section.

(6) The Protector—

- (a) who receives a child under subsection (1); or
- (b) before whom a child is brought under subsection (4),

shall immediately inform the Court For Children of such admission with a full report of the circumstances and shall in the like manner inform the Court of his departure.

Inquiries and detention of a child who has been bought or acquired under false pretences, *etc.*

42. (1) If the Protector has reasonable cause to believe that a child—

- (a) has been brought into or is to be sent out of Malaysia and the custody of the child has been acquired either—
 - (i) after having been purchased; or

- (ii) by fraud, false representation or false pretence,
whether or not for the purpose of prostitution;
- (b) has been procured either within or outside Malaysia for the purpose of being used, trained or disposed of as a prostitute; or
- (c) is being detained against his will for the purposes of—
 - (i) prostitution or for immoral purposes; or
 - (ii) being sent out of Malaysia for the purposes of prostitution or for immoral purposes,

the Protector may order the child to be removed to a place of refuge and the child shall be temporarily detained in such place of refuge.

(2) Every child who is temporarily detained under subsection (1) shall be brought before a Court For Children within twenty-four hours exclusive of the time necessary for the journey from the place where the child was so removed to the Court For Children.

(3) If it is not possible to bring a child before a Court For Children within the time specified in subsection (1), the child shall be brought before a Magistrate who may direct that the child be placed in a place of refuge until such time as the child can be brought before a Court For Children.

(4) The Court For Children before whom a child is brought shall order the child to be detained in a place of refuge until—

- (a) an inquiry into the circumstances of the child's case has been completed; and
- (b) a report of the inquiry has been submitted to the Court For Children by the Protector under subsection (6).

(5) An inquiry referred to in paragraph (4)(a) shall be made by a Protector.

(6) The Protector shall complete the inquiry and submit the report of the inquiry to the Court For Children within a period not exceeding one month from the date of the admission of the child to the place of refuge.

(7) If after considering the report submitted under subsection (6) the Court For Children is satisfied that a child brought before it is in need of protection and rehabilitation, the Court may—

- (a) order the child to be detained in a place of refuge for such period not exceeding three years from the date of the order as the Court may in the best interests of the child deem fit; or
- (b) make an order placing the child under the supervision of a Social Welfare Officer appointed by the Court for such period not exceeding three years from the date of the order as the Court may in the interest of such child deem fit.

(8) The order made under subsection (7) may have the effect of extending the period of such detention or supervision, as the case may be, beyond the date on which the child attains the age of eighteen years.

(9) Subsections 40(12) to (14) shall apply in respect of any order made under subsection (7) as they apply to an order made under section 40.

(10) If the Court For Children is not satisfied that the child brought before it is in need of protection and rehabilitation, the Court For Children shall order the child to be returned to the care and custody of his parent or guardian.

CHAPTER 2

OFFENCES

Offences

43. (1) Any person who—

- (a) sells, lets for hire or otherwise disposes of, or buys or hires or otherwise obtains possession of, a child with intent that the child is to be employed or used for the purpose of prostitution, either within or outside Malaysia, or knowing or having reason to believe that the child will be so employed or used;

- (b) procures a child for purposes of prostitution or for the purposes of having sexual intercourse with any other person, either within or outside Malaysia;
- (c) by or under any false pretence, false representation, or fraudulent or deceitful means made or used, either within or outside Malaysia, brings or assists in bringing into, or takes out of or assists in taking out of, Malaysia, a child with intent that the child is to be employed or used for purposes of prostitution, either within or outside Malaysia, or knowing or having reason to believe that the child will be so employed or used;
- (d) brings into Malaysia, receives or harbours a child knowing or having reason to believe that the child has been procured for purposes of prostitution or for the purposes of having sexual intercourse with any other person, either within or outside Malaysia, and with intent to aid such purpose;
- (e) knowing or having reason to believe that a child has been brought into Malaysia in the circumstances as set out in paragraph (c) or has been sold, let for hire, or hired or purchased in the circumstances as set out in paragraph (a), or in contravention of any other written law receives or harbours the child with intent that he is to be employed or used for purposes of prostitution either within or outside Malaysia;
- (f) detains a child in a brothel against the child's will;
- (g) detains a child in any place against the child's will with intent that the child is to be employed or used for purposes of prostitution or for any unlawful or immoral purpose;
- (h) by means of any advertisement or other notice published in any manner or displayed in any place offers a child for purposes of prostitution or seeks information for that purpose or accepts such advertisement or notice for publication or display;
- (i) acts as an intermediary on behalf of a child or exercises control or influence over the movements of a child in such a manner as to show that the person is aiding or abetting or controlling the prostitution of that child;

(j) engages or hires, for any valuable consideration, a child to provide services for that person's sexual gratification;

(k) attempts to do any act in contravention of this section,

commits an offence and shall on conviction—

(aa) in the case of offences under paragraphs (a) to (h) or paragraph (k), be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding fifteen years or to both; and

(bb) in the case of an offence under paragraph (i) or (j), be liable to a fine not exceeding fifty thousand ringgit and to imprisonment for a term of not less than three years but not more than fifteen years and shall also be punished with whipping of not more than six strokes.

(2) Any person who is convicted of a second or subsequent offence—

(a) under paragraphs (1)(a) to (g) or paragraph (1)(k), shall be liable to whipping of not more than ten strokes; and

(b) under paragraphs (1)(i) or (j), shall be punished with whipping of not less than six strokes but not more than ten strokes,

in addition to any term of imprisonment imposed in relation to such offence.

(3) Sections 173A and 294 of the Criminal Procedure Code shall not apply in respect of offences under paragraphs (1)(i) and (j).

Presumptions relating to section 43

44. For the purposes of section 43, it shall be presumed until the contrary is proved that a person—

(a) who takes or causes to be taken into a brothel a child has disposed of the child with the intent or knowledge mentioned in paragraph 43(1)(a);

(b) who receives a child into a brothel or harbours a child in a brothel has obtained possession of the child with the intent or knowledge mentioned in paragraph 43(1)(a);

- (c) has detained a child in any brothel or in any place against the child's will if, with intent to compel or induce him to remain in the brothel or the place, that person—
- (i) withholds from the child any wearing apparel or any other property belonging to the child or any wearing apparel commonly or last used by the child;
 - (ii) threatens the child with legal proceedings if the child takes away any wearing apparel or any other property which has been lent or hired out or supplied to the child;
 - (iii) threatens the child with legal proceedings for the recovery of any debt or alleged debt or uses any other threat; or
 - (iv) without any lawful authority detains the child's identity card issued under the law relating to national registration or the child's passport.

Detention pending proceedings

45. (1) Any Court inquiring into or trying any offence specified in the Second Schedule (in this Act referred to as "scheduled offence") may order a child—

- (a) with respect to whom a scheduled offence is alleged to have been committed; and
- (b) whom the Court considers to be in need of protection,

to be detained temporarily in a place of safety until the determination of the proceedings against the person charged but the detention shall not extend beyond the date on which the child attains the age of eighteen years.

(2) Notwithstanding the determination of the proceedings, the Court may, on an application made by the Protector and if the Court is satisfied that a child is in need of protection, order the detention of the child in a place of safety in accordance with paragraph 30(1)(d).

PART VII

BEYOND CONTROL

Children beyond control

46. (1) If the parent or guardian of a child requests the Court For Children in writing to detain a child in an approved school, place of refuge, probation hostel or centre on the ground that the parent or guardian is unable to exercise proper control over the child, the Court For Children—

- (a) shall immediately inquire into the circumstances of the child's case;
- (b) shall direct the probation officer to submit a probation report to the Court For Children for the Court to determine whether an order under subsection (2) may be made in respect of the child; and
- (c) may order the child to be temporarily detained in an approved school, place of refuge, probation hostel or centre if it deems it necessary to do so.

(2) If after considering the report referred to in paragraph (1)(b) the Court For Children is satisfied that—

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

the Court For Children may, on the recommendation of the probation officer, order that the child—

- (aa) be sent to an approved school, place of refuge, probation hostel or centre, as may be appropriate; or
- (bb) be placed for such period not exceeding three years under the supervision of—
 - (i) a probation officer; or
 - (ii) some other person appointed for the purpose by the Court,

and any such order may require the child to reside for a period not exceeding twelve months in a probation hostel.

Supervision by probation officer

47. (1) If a Court For Children makes an order under paragraph 46(2)(bb) placing a child under the supervision of a probation officer or of some other person, that officer or other person—

- (a) shall, while the order remains in force, visit, advise and befriend the child; and
- (b) may, if it appears necessary to do so, at any time while the order remains in force, bring the child before the Supervising Court.

(2) The Supervising Court before whom a child is brought under paragraph (1)(b) may, if it deems it expedient to do so, amend the order made under section 46 and—

- (a) send the child, subject to the consent of the child's parent or guardian, to an approved school, place of refuge or centre, whichever is appropriate; or
- (b) place the child in the care of a fit and proper person, whether a relative or not, who is willing to undertake the care of the child, for the unexpired period of the order.

PART VIII**TRAFFICKING IN AND ABDUCTION OF CHILDREN****Unlawful transfer of possession, custody or control of child**

48. (1) Any person who takes part in any transaction the object or one of the objects of which is to transfer or confer, wholly or partly, temporarily or permanently, the possession, custody or control of a child for any valuable consideration commits an offence and shall on conviction be liable to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding five years or to both.

(2) Any person who without lawful authority or excuse harbours or has in his possession, custody or control a child with respect to whom the temporary or permanent possession, custody or control has been transferred or conferred for valuable consideration by

any other person within or outside Malaysia commits an offence and shall on conviction be liable to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding five years or to both.

(3) For the purposes of subsection (2), if any person harbours or has in his possession, custody or control a child without lawful authority or excuse, the child shall, until the contrary is proved, be presumed to be a child with respect to whom the temporary or permanent possession, custody or control has been transferred or conferred for valuable consideration.

(4) It shall be a defence in any prosecution under this section to prove that—

(a) the transfer took place in contemplation of or pursuant to a *bona fide* marriage or adoption; and

(b) at least one of the natural parents of the child or the guardian of the child was a consenting party to the marriage or to the adoption by the adopting party,

and had expressly consented to the particular marriage or adoption.

Importation of child by false pretences

49. Any person who—

(a) by or under any false pretence or representation made;
or

(b) by fraudulent or deceitful means used,

either within or outside Malaysia, brings or assists in bringing a child into Malaysia commits an offence and shall on conviction be liable to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding five years or to both.

Examination of child and person in charge

50. A Protector or any person authorized in writing by a Protector may require—

(a) a child who has entered or been brought into Malaysia;
and

- (b) any person who may appear to have the custody or control of such child,

to appear before him, at any reasonable time and at any convenient place, to be examined pursuant to section 113.

Protector may require security

51. If a Protector has reasonable cause to believe that a child—

- (a) has been brought into Malaysia either—
- (i) after having been transferred for valuable consideration; or
 - (ii) by fraud, misrepresentation or any false pretence;
- (b) has been transferred to the custody or control of any person for valuable consideration either within or outside Malaysia; or
- (c) is being detained against his will by some person other than his parent or guardian,

the Protector may—

- (aa) require any person in whose custody or under whose control the child appears to be—
- (i) to furnish him with copies of the child's and that person's own photographs; and
 - (ii) to furnish security to the satisfaction of the Protector that the child—
 - (A) will not leave the area or the State in which he then is without the prior written consent of the Protector;
 - (B) will not be transferred to the care or custody of any other person without the prior written consent of the Protector; and
 - (C) will be produced before the Protector whenever the Protector requires; or

(*bb*) in the first instance, or if default be made in complying with any order made under paragraph (*aa*), make an order that—

- (i) the child be taken out of the custody of the person in whose care, custody or control the child is and placed the child in a place of safety; or
- (ii) on such security and on such conditions as the Protector may require, the child be placed in the custody of a relative or other fit and proper person,

until the child attains the age of eighteen years or for any shorter period.

Offence of taking or sending out a child without appropriate consent of person having lawful custody

52. (1) Any parent or guardian who—

- (*a*) does not have the lawful custody of a child; and
- (*b*) takes or sends out a child, whether within or outside Malaysia,

without the consent of the person who has the lawful custody of the child commits an offence and shall on conviction be liable to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding five years or to both.

(2) A person has lawful custody of a child under this section if he has been conferred custody of the child by virtue of any written law or by an order of a Court, including a Syariah Court.

(3) It shall be a defence under this section if a parent or guardian takes or sends a child away without the consent of the person having lawful custody of the child if—

- (*a*) the parent or guardian—
 - (i) does it in the belief that the other person consented, or would have consented, if he was aware of all the relevant circumstances; or

- (ii) has taken all reasonable steps to communicate with the other person but has been unable to communicate with him;
- (b) the parent or guardian has reasonable grounds to believe that the child is being abused, neglected, abandoned or exposed in a manner likely to cause the child physical or emotional injury; or
- (c) the other person has unreasonably refused to consent although he was aware of all the relevant circumstances.

Recovery order

53. (1) If it appears to the Court that there is reason to believe that a child had been taken or sent away without the consent of the person who has lawful custody of the child as described in section 52, the Court may make a recovery order.

(2) A recovery order may be made by the Court on application being made by or on behalf of any person who has the lawful custody of the child.

(3) For the purposes of this section, a “recovery order” may—

- (a) direct any person who is in a position to do so to produce the child on request to any authorized person;
- (b) authorize the removal of the child by any authorized person;
- (c) require any person who has information as to the child’s whereabouts to disclose that information to the authorized person;
- (d) authorize any police officer to enter into any premises specified in the order and search for the child, using reasonable force if necessary.

(4) Any person who intentionally obstructs an authorized person from exercising the powers under subsection (3) commits an offence and shall on conviction be liable to imprisonment for a term not exceeding three years and to whipping not exceeding six strokes.

PART IX

INSTITUTIONS

Chapter 1

PLACES OF SAFETY AND PLACES OF REFUGE

Places of safety

54. (1) The Minister may, by notification in the *Gazette*, establish or appoint any place, institution or centre to be a place of safety for the care and protection of children.

(2) The Minister may at any time direct the closing of any place of safety established or appointed under subsection (1).

Places of refuge

55. (1) The Minister may, by notification in the *Gazette*, establish or appoint any place, institution or centre to be a place of refuge for the care and rehabilitation of children.

(2) The Minister may at any time direct the closing of any place of refuge established or appointed under subsection (1).

Child who escapes or is removed from place of safety or place of refuge

56. Any child who escapes or is removed from a place of safety or place of refuge without lawful authority—

(a) may be arrested without a warrant by any Protector or police officer and shall be brought back to the place of safety or place of refuge; and

(b) shall be detained—

(i) in the case of a place of safety, for such period which is equal to the unexpired residue of his stay under the order originally made by the Court For Children; and

- (ii) in the case of a place of refuge, for such period which is equal to the period during which he was unlawfully at large and for the unexpired residue of his term of detention under the order originally made by the Court For Children.

Offence of removing or helping a child to escape from place of safety or place of refuge

57. Any person who—

- (a) removes a child from a place of safety or place of refuge without lawful authority;
- (b) knowingly assists or induces, directly or indirectly, a child to escape from a place of safety or a place of refuge; or
- (c) knowingly harbours or conceals a child who has so escaped, or prevents him from returning to the place of safety or place of refuge,

commits an offence and shall on conviction be liable to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding five years or to both.

Chapter 2

PLACES OF DETENTION

Places of detention

58. (1) The Minister may, by notification in the *Gazette*, establish or appoint such places of detention as may be required for the purposes of this Act.

(2) A child shall ordinarily be remanded in custody in a place of detention established or appointed under this Act and situated in the same State in which is situated the Court For Children by which the child is remanded.

(3) The order or judgment in pursuance of which a child is committed to custody in a place of detention shall be—

- (a) delivered with the child to the person in charge of the place of detention; and
- (b) an authority for his detention in the place of detention in accordance with the terms of the order or judgment.

(4) A child while being detained and while being conveyed to and from the place of detention shall be deemed to be in lawful custody.

(5) The Minister—

- (a) shall cause places of detention to be inspected; and
- (b) may make regulations—
 - (i) as to the classification, treatment, employment and control of children detained in such places of detention; and
 - (ii) to provide for the appointment of fit and proper persons to visit periodically children detained in such places of detention.

Child who escapes or is removed from place of detention

59. Any child who escapes or is removed from a place of detention without lawful authority—

- (a) may be arrested without a warrant by any Protector or police officer and be brought back to the place of detention; and
- (b) shall be detained in the place of detention for the unexpired residue of his term of detention under the order originally issued by the Court For Children.

Offence of removing or helping a child to escape from place of detention

60. Any person who—

- (a) removes a child from a place of detention without lawful authority;

- (b) knowingly assists or induces, directly or indirectly, a child to escape from a place of detention; or
- (c) knowingly harbours or conceals a child who has so escaped, or prevents him from returning to the place of detention,

commits an offence and shall on conviction be liable to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding five years or to both.

CHAPTER 3

PROBATION HOSTELS

Probation hostels

61. (1) The Minister may, by notification in the *Gazette*, establish or appoint such probation hostels as may be required for the purposes of this Act.

(2) The Minister may make regulations for the regulation, management and inspection of probation hostels.

Child under ten years of age not to be sent to probation hostel

62. A Court For Children shall not make an order requiring a child under the age of ten years to be sent to a probation hostel.

Child who escapes or is removed from probation hostel

63. Any child who escapes or is removed from a probation hostel without lawful authority—

- (a) may be arrested without a warrant by any probation officer or police officer; and
- (b) be brought back to that hostel or before the Supervising Court,

and the Supervising Court may deal with him for the offence for which he was sent to the probation hostel in the same manner in which the Supervising Court could deal with him if it had just found him guilty of that offence.

Offence of removing or helping a child to escape from probation hostel

64. Any person who—

- (a) removes a child from a probation hostel without lawful authority;
- (b) knowingly assists or induces, directly or indirectly, a child to escape from a probation hostel; or
- (c) knowingly harbours or conceals a child who has so escaped, or prevents him from returning to the probation hostel,

commits an offence and shall on conviction be liable to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding five years or to both.

CHAPTER 4**APPROVED SCHOOLS****Approved schools**

65. (1) The Minister may, by notification in the *Gazette*, establish or appoint such approved schools as may be required for the education, training and detention of children to be sent there in pursuance of this Act.

(2) The Minister may classify such approved schools—

- (a) according to the ages of the persons for whom they are intended; and
- (b) in such other ways as he may think fit so as to ensure that a child sent to an approved school is sent to a school appropriate to his case.

Child under ten years of age not to be sent to approved school

66. A Court For Children shall not make an order requiring a child under the age of ten years to be sent to an approved school.

When a child can be sent to approved school

67. (1) If—

- (a) a child is found guilty of any offence;
- (b) the probation report submitted to the Court For Children shows that—
 - (i) the parents or guardian of the child can no longer exercise or is incapable of exercising any proper control over him; and
 - (ii) the child is in need of institutional rehabilitation; and
- (c) it appears to the Court For Children that although the offence committed is not serious in nature but it is expedient that the child be subject to detention for such term and under such instruction and discipline as appears most conducive to his reformation,

the Court For Children shall, on the recommendation of the probation officer, send the child to an approved school.

(2) If a Court For Children orders a child to be sent to an approved school, the order shall be an authority for his detention in that approved school for a period of three years from the date of the order.

(3) Notwithstanding subsection (2) the Board of Visitors of the approved school to which a child is sent may, in their discretion—

- (a) shorten the period of detention for reasons which appear to them to be sufficient; or
- (b) permit any such child to be released for such period and upon such conditions as they may deem fit to impose.

(4) A child shall not be permitted to be released from an approved school under paragraph (3)(b) during the first twelve months of the period of detention without the consent in writing of the Minister.

Approved school order to be delivered to the authority, etc., who conveys child to the school

68. (1) The Court For Children which makes an approved school order shall cause it to be delivered to the authority or person responsible for conveying the child to the school, and the authority or person who conveys the child to the school shall deliver the approved school order to the person for the time being in charge of the school.

(2) The Court For Children which makes an approved school order shall cause all such information in the possession of the Court with respect to a child as is in the opinion of the Court should be known by the person for the time being in charge of the school, to be transmitted to the person for the time being in charge of the school.

(3) If a child has been ordered to be sent to an approved school, any person who knowingly harbours or conceals him after the time has come for him to go to the school commits an offence and shall on conviction be liable to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding five years or to both.

(4) If a person authorized to take a child to an approved school is, when the time has come for him to go to the school, unable to—

(a) find the child; or

(b) obtain possession of the child,

the Court For Children may, if satisfied by information on oath or affirmation that there is reasonable ground for believing that some person named in the information can produce the child, issue a summons requiring the person so named to attend at the Court on such day as may be specified in the summons and produce the child.

(5) If the person referred to in subsection (4) fails to comply with the requisition under that subsection without reasonable excuse he shall, in addition to any other liability to which he may be subject to under this Act, on conviction be liable to a fine not exceeding ten thousand ringgit.

Further detention in approved school beyond period of order

69. If the person for the time being in charge of an approved school is satisfied that a child—

- (a) whose period of detention in the approved school is about to expire needs further care or training; and
- (b) cannot be placed in suitable employment without such further care or training,

he may, if the Board of Visitors of the approved school consent, detain him for a further period not exceeding six months but any such period shall not extend beyond the date the child attains the age of eighteen years.

Aftercare of child released from approved school

70. If a child is sent to an approved school, the Court For Children making the order shall, at the same time, make an order that after the expiration of the period of his detention he shall, for a period of one year, be under the supervision of—

- (a) a probation officer; or
- (b) such other person as the Child Welfare Committee may appoint.

Escape from approved school, etc., or failure to return to approved school after expiry of leave, etc.

71. (1) Any child who—

- (a) escapes from the approved school in which he is detained, or from any hospital, home or place in which he is receiving medical attention;
- (b) being absent from the approved school on temporary leave of absence or with permission—
 - (i) runs away from the person in whose charge he is; or
 - (ii) fails to return to the approved school upon the expiration of his leave, or upon the revocation of such permission; or

- (c) being absent from the approved school under supervision, fails to return to the approved school upon being recalled,

may be arrested without a warrant and be brought before the Court For Children where the child is found or the approved school is situated.

(2) If a child brought before a Court For Children under subsection (1) is under the age of fourteen years, the Court For Children shall order the child to be brought back to the approved school or to be sent to another approved school for—

- (a) a period which is equal to the period during which he was unlawfully at large;
- (b) the remainder of his period of detention; and
- (c) such period not exceeding six months as the Court may direct, in addition to the periods mentioned in paragraphs (a) and (b).

(3) If a child brought before the Court For Children under subsection (1) has attained the age of fourteen years, the Court For Children may order the child—

- (a) to be brought back to the approved school or to be sent to another approved school for—
 - (i) a period equal to the period during which he was unlawfully at large;
 - (ii) the remainder of his period of detention; and
 - (iii) such further period not exceeding six months as the Court may direct; or
- (b) if circumstances warrant it and on the recommendation of the probation officer the Court thinks it necessary to do so, to be sent to a Henry Gurney School for such period as the Court may direct.

Offence of removing or helping a child to escape from approved school

72. Any person who—

- (a) removes a child from an approved school without lawful authority;

- (b) knowingly assists or induces, directly or indirectly, a child to escape from an approved school; or
- (c) knowingly harbours or conceals a child who has so escaped, or prevents him from returning to the approved school,

commits an offence and shall on conviction be liable to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding five years or to both.

CHAPTER 5

HENRY GURNEY SCHOOLS

Henry Gurney Schools

73. The Minister may, by notification in the *Gazette*, establish or appoint such Henry Gurney Schools as may be required for the purposes of this Act.

Child under fourteen years of age not to be sent to Henry Gurney School

74. A Court For Children shall not make an order requiring a child under the age of fourteen years to be sent to a Henry Gurney School.

When a child can be sent to Henry Gurney School

75. (1) If—

- (a) a child is found guilty of any offence punishable with imprisonment;
- (b) the probation report submitted to the Court For Children shows that—
 - (i) the parents or guardian of the child can no longer exercise or is incapable of exercising any proper control over him;
 - (ii) the child is habitually in the company of persons of bad character; and

- (iii) the child is not suitable to be rehabilitated in an approved school; and

(c) it appears to the Court For Children—

- (i) that the offence committed is serious in nature; and
- (ii) by reason of the nature of the child's criminal habits and tendencies it is expedient that the child be subject to detention for such term and under such instruction and discipline as appears most conducive to his reformation and the repression of crime,

the Court For Children shall, on the recommendation of the probation officer, send the child to a Henry Gurney School.

(2) If a Court For Children orders a child aged fourteen years or above to be sent to a Henry Gurney School—

(a) the order shall be—

- (i) an authority for his detention for a period of three years from the date of the order; and
- (ii) valid for his detention up to but not after he has attained the age of twenty-one years; and

(b) sections 68 to 72 shall apply with the following modifications:

- (i) for the words “approved school” wherever appearing there shall be substituted the words “Henry Gurney School”; and
- (ii) in section 69, for the words “the Board of Visitors of the approved school consent” there shall be substituted the words “the Director General of Prisons in the case of a Henry Gurney School consents” and the age referred to in that section shall be increased by three years.

(3) Notwithstanding subsection (2), the Director General of Prisons may, in his discretion—

- (a) shorten the period of detention of a child in a Henry Gurney School for reasons which appear to him to be sufficient; or

- (b) release any such child with permission for such period and upon such conditions as he may deem fit to impose.

CHAPTER 6

SPECIAL PROVISIONS IN RELATION TO PLACES OF SAFETY, PLACES OF REFUGE, APPROVED SCHOOLS AND HENRY GURNEY SCHOOLS

Power in respect of persons of eighteen years but under twenty-one years of age

76. Notwithstanding anything in this Act, the High Court, a Sessions Court and a Magistrate's Court shall have the power to order the detention, in a Henry Gurney School, up to but not after he has attained the age of twenty-one years, of any person who has attained the age of eighteen years but has not attained the age of twenty-one years at the date of making such order.

Power of Minister to remove person undergoing imprisonment to Henry Gurney School

77. (1) The Minister may, by warrant under his hand, direct any person who—

- (a) has attained the age of eighteen years but has not attained the age of twenty-one years; and
- (b) is in prison under a sentence of imprisonment,

to be removed to a Henry Gurney School.

(2) If a warrant is made under subsection (1)—

- (a) the unexpired residue of that person's prison sentence shall be deemed to be cancelled; and
- (b) such warrant shall be an authority for the detention of that person in the Henry Gurney School under this Act until the date when his sentence, less any remission for good conduct earned while serving his sentence in prison, would, but for this section, have expired.

(3) A warrant under subsection (1) shall not be made unless the age of the person and the unexpired residue of his sentence

of imprisonment permit him to be detained in the Henry Gurney School for not less than two years.

Power of Minister to remove child undergoing imprisonment to approved school or Henry Gurney School

78. (1) The Minister may, by warrant under his hand, direct a child who is in prison under an order of imprisonment to be removed to an approved school or a Henry Gurney School.

(2) If a warrant is made under subsection (1)—

- (a) the unexpired residue of that child's prison order shall be deemed to be cancelled; and
- (b) such warrant shall be an authority for the detention of that child in the approved school or the Henry Gurney School, as the case may be, under this Act until the date when his prison order, less any remission for good conduct earned while serving his term of imprisonment, would, but for this section, have expired.

(3) The Minister may, at any time for reasons which appear to him to be sufficient, by order in writing direct the removal of any child from—

- (a) an approved school to any other approved school or to a Henry Gurney School; or
- (b) a Henry Gurney School to any other Henry Gurney School or to an approved school,

as may be specified in the order.

Power to substitute term of detention to term of imprisonment

79. If it is made to appear to any Court For Children upon the application of the person in charge of any approved school or Henry Gurney School that any child detained in the approved school or Henry Gurney School under this Act—

- (a) has been guilty of a serious and wilful breach of the rules of the approved school or Henry Gurney School;

- (b) has been guilty of inciting other inmates of the approved school or Henry Gurney School to such a breach; or
- (c) is incorrigible or exercising a bad influence on the other inmates of the approved school or Henry Gurney School,

the Court For Children may substitute for the unexpired residue of the term of detention of that child such term of imprisonment not exceeding the unexpired residue as the Court may determine.

Transfer of child from one place of safety or place of refuge to another place of safety or place of refuge

80. Without prejudice to any written law relating to immigration, whenever an order has been made under this Act for the detention of a child in a place of safety or place of refuge and it appears to the Director General that in the best interests of the child it is expedient that he be transferred from that place of safety or place of refuge to another place of safety or place of refuge within Malaysia, it shall be lawful for the Director General to issue an order that the child shall be so transferred.

CHAPTER 7

MISCELLANEOUS

Child or person detained to be subject to regulations

81. Every child detained in any place of safety or place of refuge, place of detention, probation hostel, approved school or Henry Gurney School, or every person detained in a Henry Gurney School under this Act shall during the period of the child's or person's detention, be subject to such regulations as may be prescribed.

Board of Visitors

82. The Minister may appoint for each place of safety, place of refuge and approved school a Board of Visitors to perform such duties and functions as the Minister may prescribe.

PART X

CRIMINAL PROCEDURE IN COURT FOR CHILDREN

CHAPTER 1

CHARGE, BAIL, *ETC.*

Trials of children to be in conformity with this Act

83. (1) Notwithstanding anything contained in any written law relating to the arrest, detention and trial of persons committing any offence but subject to subsections (3) and (4), a child who is alleged to have committed an offence shall not be arrested, detained or tried except in accordance with this Act.

(2) When a child is charged with an offence before a Court For Children and during the pendency of the case he attains the age of eighteen years the Court For Children shall, notwithstanding any provisions of this Act, continue to hear the charge against the child and may—

- (a) exercise the power under section 76;
- (b) exercise the power under paragraph 91(1)(a), (b), (c), (d) or (g); or
- (c) if the offence is punishable with imprisonment, impose any term of imprisonment which could be awarded by a Sessions Court.

(3) When an offence is committed by a child but a charge in respect of that offence is made against the child after he has attained the age of eighteen years, the charge shall be heard by a Court other than a Court For Children and that other Court may exercise the power mentioned in paragraph (2)(a), (b) or (c).

(4) A charge made jointly against a child and a person who has attained the age of eighteen years shall be heard by a Court other than a Court For Children and that other Court shall—

- (a) exercise in respect of the child all the powers which may be exercised under this Act by a Court For Children; and

- (b) before exercising the powers referred to in paragraph (a), consider the probation report.

Bail

84. (1) If a child is arrested with or without a warrant, the child shall be brought before a Court For Children within twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Court For Children.

(2) If it is not possible to bring a child before a Court For Children within the time specified in subsection (1), the child shall be brought before a Magistrate who may direct that the child be remanded in a place of detention until such time as the child can be brought before the Court For Children.

(3) The Court For Children before whom a child is brought shall inquire into the case and unless—

- (a) the charge is one of murder or other grave crime;
- (b) it is necessary in the best interests of the child arrested to remove him from association with any undesirable person; or
- (c) the Court For Children has reason to believe that the release of the child would defeat the ends of justice,

the Court For Children shall release the child on a bond, with or without sureties, for such amount as will, in the opinion of the Court For Children, secure the attendance of that child upon the hearing of the charge, being executed by his parent or guardian or other responsible person.

(4) Nothing in this section shall be deemed to affect the powers of a police officer to release the child arrested on bail in accordance with the Criminal Procedure Code.

Separation of child from adult in police stations or Courts

85. Appropriate arrangements shall be made—

- (a) to prevent a child while—
 - (i) being detained in a police station;

- (ii) being conveyed to or from any Court; or
 - (iii) waiting before or after attendance in any Court,
- from associating with an adult who is charged with an offence;
- (b) to ensure that a child, if a girl, while being so detained or conveyed, or waiting, is under the care of a woman; and
 - (c) to prevent the picture of a child while—
 - (i) being detained in a police station;
 - (ii) being conveyed to or from any Court; or
 - (iii) waiting before or after attendance in any Court,from being recorded in any manner on tape or film or by any electronic medium.

Custody of child not discharged on bail after arrest

86. (1) If a child having been arrested and while awaiting trial before a Court For Children is not released under section 84, the Court For Children before whom the child is brought shall cause him to be detained in a place of detention provided under this Act until he can be brought before the Court having jurisdiction unless the Court For Children certifies that—

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

(2) Under the circumstances referred to in paragraph (1)(a), (b) or (c), the Court For Children shall have the power to order the child to be detained—

- (a) in a police station, police cell or police lock-up, separate or apart from adult offenders; or
- (b) in a mental hospital,

as the case may require.

(3) If an order for detention in a mental hospital is made under subsection (2), Chapter XXXIII of the Criminal Procedure Code shall apply with such modifications as may be necessary.

Submission of information by police officer after arrest

87. After the arrest of a child, the police officer or other person making the arrest shall—

- (a) immediately inform a probation officer and the child's parent or guardian of the arrest; and
- (b) if the child is charged with any offence, cause to be transmitted to the probation officer a copy of the charge and other information necessary to enable the probation officer to take such action as may be necessary to prepare or obtain, as the case may be, a probation report.

CHAPTER 2

TRIALS

Parent or guardian required to attend

88. (1) If a child is charged with any offence, the Court For Children shall require the child's parents or guardian to attend at the Court For Children before which the case is heard or determined during all the stages of the proceedings, unless the Court For Children is satisfied that it would be unreasonable to require the attendance of the parents or guardian.

(2) Any parent or guardian of a child who fails to attend the Court For Children when required to do so under subsection (1) commits an offence and shall on conviction be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding two years or to both.

Parents or guardian may be required to withdraw

89. If in any case the Court For Children considers it necessary in the best interests of the child, the Court may require his parents or guardian, as the case may be, to withdraw from the Court.

Procedure in Court For Children

90. (1) If a child is brought before a Court For Children for any offence, it shall be the duty of the Court to explain to him in simple language suitable to his age, maturity and understanding the substance of the alleged offence.

(2) The duty referred to in subsection (1) may be undertaken, under the supervision of the Court by—

(a) the defence counsel acting for the child; or

(b) any other responsible person as determined by the Court.

(3) After the substance of the alleged offence has been explained to the child, the Court shall ask the child whether he admits the facts constituting the offence.

(4) If the child admits the facts constituting the offence, the Court shall—

(a) ascertain that the child understands the nature and consequences of his admission; and

(b) record a finding of guilt.

(5) If the child does not admit the facts constituting the offence, the Court shall then hear the evidence of the witnesses in support thereof.

(6) At the close of the evidence in chief of each witness, the witness may be cross-examined by or on behalf of the child.

(7) The Court For Children shall, except if the child is legally represented, allow the child's parents or guardian or any relative or other responsible person to assist him in conducting his defence.

(8) If in any case where the child is not legally represented or assisted in his defence as provided for in subsection (7), the child, instead of asking questions by way of cross-examination, makes assertions, the Court For Children—

(a) may put to the child such questions as may be necessary in order to bring out, or explain anything in, the assertions of the child; and

(b) shall then put to the witness such questions as the Court thinks necessary on behalf of the child.

(9) If it appears to the Court that a *prima facie* case is made out—

(a) the Court shall explain to the child the substance of the evidence against him and, in particular, any points in the evidence which specially tell against him or require his explanation;

(b) the child shall be allowed to—

(i) give evidence upon oath or affirmation; or

(ii) make any statement if he so desires; and

(c) the evidence of any witness for the defence shall be heard.

(10) If the Court For Children finds the child is not guilty, the Court shall record an order of acquittal.

(11) If—

(a) a finding of guilt has been recorded; or

(b) the Court is satisfied that the offence is proved,

the child and the child's parent or guardian or other responsible person, if present, shall then be asked if they desire to say anything in extenuation or mitigation of the penalty or otherwise.

(12) The Court For Children shall, before deciding how to deal with the child, consider the probation report.

(13) A probation report referred to in subsection (12) shall be prepared by a probation officer and the report—

(a) shall contain such information as to the child's general conduct, home surroundings, school record and medical history as may enable the Court For Children to deal with the case in the best interests of the child; and may put to him any question arising out of the probation report; and

(b) may include any written report of a Social Welfare Officer,

a registered medical practitioner or any other person whom the Court For Children thinks fit to provide a report on the child.

(14) For the purpose of obtaining a probation report, the Court For Children may from time to time release the child on bail or remand him in a place of detention.

(15) If the Court For Children has considered the probation report, the Court shall explain to—

- (a) the child the substance of any part of the report bearing on his character or conduct which the Court considers to be material to the manner in which he should be dealt with; and
- (b) the parent or guardian, if present, the substance of any part of the report which the Court considers to be material to the manner in which the child should be dealt with and which has reference to the character, conduct, home surroundings, or health of the child.

(16) If the child or his parent or guardian, having been explained the substance of any part of any such probation report under subsection (15), desires to produce information with respect to the report, the Court shall, if it thinks that the information is material—

- (a) adjourn the hearing for the production of further information; and
- (b) if necessary, require the person who made the report to attend the hearing when it resumes.

(17) Before deciding on the order to be imposed, the Court shall ascertain from each of the advisers his opinion and all such opinions shall be recorded.

(18) After having recorded and considered the opinions of the advisers, the Court shall decide on the order to be imposed, but in so doing the Court—

- (a) shall not be bound to conform to the opinions of the advisers or either of them; and
- (b) shall record its reasons for dissenting from such opinions.

CHAPTER 3

POWERS OF THE COURT FOR CHILDREN AT THE
CONCLUSION OF THE TRIAL**Powers of Court For Children on proof of offence**

91. (1) If a Court For Children is satisfied that an offence has been proved the Court shall, in addition to any other powers exercisable by virtue of this Act, have power to—

- (a) admonish and discharge the child;
- (b) discharge the child upon his executing a bond to be of good behaviour and to comply with such conditions as may be imposed by the Court;
- (c) order the child to be placed in the care of a relative or other fit and proper person—
 - (i) for such period to be specified by the Court; and
 - (ii) with such conditions as may be imposed by the Court;
- (d) order the child to pay a fine, compensation or costs;
- (e) make a probation order under section 98;
- (f) order the child to be sent to an approved school or a Henry Gurney School;
- (g) order the child, if a male, to be whipped with not more than ten strokes of a light cane—
 - (i) within the Court premises; and
 - (ii) in the presence, if he desires to be present, of the parent or guardian of the child;
- (h) impose on the child, if he is aged fourteen years and above and the offence is punishable with imprisonment and subject to subsection 96(2), any term of imprisonment which could be awarded by a Sessions Court.

(2) The words “conviction” and “sentence” shall not be used in relation to a child dealt with by the Court For Children and any

reference in any written law to a person convicted, a conviction and a sentence shall, in the case of a child, be construed as a child found guilty, a finding of guilt and an order made upon a finding of guilt respectively.

(3) A finding of guilt of a child shall be disregarded for the purposes of any written law which—

- (a) imposes any disqualification or disability upon a convicted person; or
- (b) authorizes or requires the imposition of any such disqualification or disability.

Manner of executing whipping

92. The following provisions shall be followed when executing the order of whipping:

- (a) before executing the whipping, the child shall be examined by a medical officer to certify that the child is in a fit state of health to undergo the whipping;
- (b) the person shall use a light cane with average force without lifting his hand over his head so that the child's skin is not cut;
- (c) after inflicting a stroke, he shall lift the cane upward and not pull it;
- (d) whipping may be inflicted on any part of the body except the face, head, stomach, chest or private parts;
- (e) the child shall wear clothes; and
- (f) if during the execution of the whipping the medical officer certifies that the child is not in a fit state of health to undergo the remainder of the whipping, the whipping shall be finally stopped.

Parent or guardian to execute bond

93. (1) The Court For Children shall, in addition to exercising any of the powers provided for in subsection 91(1), order the

parent or guardian of the child to execute a bond for the child's good behaviour with or without security and with one or more of the following conditions:

- (a) that the parent or guardian accompanied by the child shall report at regular intervals to be determined by the Court, at the welfare department or police station situated nearest to the parent's or guardian's place of residence;
- (b) that the parent or guardian accompanied by the child shall attend interactive workshops organized at designated centres established for such purpose;
- (c) if the child is in an educational institution, that the parent or guardian shall consult with the child's teacher and head teacher or principal once a month for the duration of the bond;
- (d) if the child is sent to an approved school or a Henry Gurney School, that the parent or guardian shall visit the child on a regular basis to be determined by the Court; or
- (e) any other condition as the Court thinks fit.

(2) If any parent or guardian fails to comply with any of the conditions of the bond referred to in subsection (1)—

- (a) the parent or guardian commits an offence and shall on conviction be liable to a fine not exceeding five thousand ringgit; and
- (b) the Court may order the security, if any, to be forfeited; and the provisions of the Criminal Procedure Code relating to the forfeiture of bonds shall apply in relation to the security.

(3) An order under subsection (1) shall not be made against a parent or guardian without giving the parent or guardian an opportunity to be heard.

(4) Notwithstanding subsection (3), an order under subsection (1) may be made if the Court For Children is satisfied on information given by a probation officer that the parent or guardian of the child, having been required to attend, has failed to do so, or is not available or cannot be found within a reasonable time.

Power to order parent or guardian to pay fine, etc., instead of child**94. (1) If—**

(a) a child is charged before a Court For Children with any offence for the commission of which—

(i) a fine may be imposed; and

(ii) compensation or costs or both compensation and costs may be awarded; and

(b) the Court is of the opinion that the case would be best met by the imposition of all or any of those penalties, whether with or without any other punishment,

the Court shall order that the fine imposed and compensation or costs awarded be paid by the parent or guardian of the child instead of by the child, unless the Court is satisfied that the parent or guardian—

(aa) is not available or cannot be found within a reasonable time; or

(bb) has not conduced to the commission of the offence by neglecting to exercise due care of the child.

(2) If—

(a) a Court For Children thinks that a charge against a child is proved; or

(b) a child admits the facts constituting the offence in the charge,

the Court may make an order requiring the parent or guardian—

(aa) to pay compensation or costs; or

(bb) to give security for the good behaviour of the child,

without proceeding to record a finding of guilt against the child.

(3) When the Court requires the parent or guardian to give security for the good behaviour of a child under subsection (2), one or more of the conditions mentioned in subsection 93(1) shall be imposed on the parent or guardian.

(4) If the parent or guardian fails to comply with the conditions of the security, the Court may order the security to be forfeited.

(5) An order under this section shall not be made against the parent or guardian of the child without giving the parent or guardian an opportunity to be heard.

(6) Notwithstanding subsection (4), an order under this section may be made if the Court For Children is satisfied on information given by a probation officer that the parent or guardian of the child, having been required to attend, has failed to do so or is not available or cannot be found within a reasonable time.

(7) Any sum imposed and ordered to be paid by a parent or guardian of a child under this section or on forfeiture of any such security may be recovered from the parent or guardian in the manner provided by the Criminal Procedure Code in like manner as if the order had been made on the conviction of the parent or guardian of the offence with which the child was charged.

Appeals

95. (1) The Public Prosecutor or any child or his parent or guardian, if aggrieved by any finding or order of a Court For Children, may appeal to the High Court against such finding or order in accordance with the provisions of the Criminal Procedure Code relating to criminal appeals to the High Court from Magistrate's Court.

(2) Except in the case of whipping, the execution of which shall be stayed pending appeal, no appeal shall operate as a stay of execution, but the Court For Children may stay execution on any judgment or order pending appeal, on such terms as to security for the payment of any money or the performance or non-performance of any act or the suffering of any punishment ordered by or in such judgment or order as the Court For Children may deem reasonable.

(3) The High Court shall, in all criminal appeals originating from a Court For Children, make its final decision within twelve months after the notice of appeal has been filed.

(4) Any appeal under this section shall, notwithstanding any other written law, be intituled "Appeal By Children" and in dealing

with any such appeal, sections 12 and 15 shall apply, with such modifications as may be necessary, to the High Court.

Restrictions on order of imprisonment

96. (1) A child under the age of fourteen years shall not—

- (a) be ordered to be imprisoned for any offence; or
- (b) be committed to prison in default of payment of a fine, compensation or costs.

(2) A child aged fourteen years or above shall not be ordered to be imprisoned if he can be suitably dealt with in any other way whether by probation, or fine, or being sent to a place of detention or an approved school, or a Henry Gurney School, or otherwise.

(3) A child aged fourteen years or above shall not, if ordered to be imprisoned, be allowed to associate with adult prisoners.

Death

97. (1) A sentence of death shall not be pronounced or recorded against a person convicted of an offence if it appears to the Court that at the time when the offence was committed he was a child.

(2) In lieu of a sentence of death, the Court shall order a person convicted of an offence to be detained in a prison during the pleasure of—

- (a) the Yang di-Pertuan Agong if the offence was committed in the Federal Territory of Kuala Lumpur or the Federal Territory of Labuan; or
- (b) the Ruler or the Yang di-Pertua Negeri, if the offence was committed in the State.

(3) If the Court makes an order under subsection (2), that person shall, notwithstanding anything in this Act—

- (a) be liable to be detained in such prison and under such conditions as the Yang di-Pertuan Agong or the Ruler or the Yang di-Pertua Negeri may direct; and

(b) while so detained, be deemed to be in lawful custody.

(4) If a person is ordered to be detained at a prison under subsection (2), the Board of Visiting Justices for that prison—

(a) shall review that person's case at least once a year; and

(b) may recommend to the Yang di-Pertuan Agong or the Ruler or the Yang di-Pertua Negeri on the early release or further detention of that person,

and the Yang di-Pertuan Agong or the Ruler or the Yang di-Pertua Negeri may thereupon order him to be released or further detained, as the case may be.

CHAPTER 4

PROBATION

When probation may be ordered

98. (1) If a Court For Children by or before which a child is found guilty of an offence other than—

(a) any grave crime;

(b) voluntarily causing grievous hurt, rape, incest or outraging modesty; or

(c) an offence under section 377B, 377C, 377D or 377E of the Penal Code,

is of opinion that having regard to the circumstances, including the nature of the offence and the character of the child, it is appropriate to do so, the Court For Children may make a probation order.

(2) Before making the probation order under subsection (1), the Court For Children shall explain to the child in simple language suitable to his age, maturity and understanding—

(a) the effect of the order; and

(b) that if he—

(i) fails to comply with the probation order; or

(ii) commits another offence,

he shall be liable to be dealt with for the original offence as well as for the other offence.

(3) A probation order shall have effect for such period not less than one year and not more than three years from the date of the order as may be specified in the probation order.

(4) For the purposes of securing the good conduct and supervision of the probationer or preventing a repetition by him of the same offence or the commission of other offences, a probation order shall—

- (a) require the probationer to submit during that period to the supervision of a probation officer;
- (b) specify that the probationer is not to commit any offence during the probation order; and
- (c) contain such other requirements, as the Court having regard to the circumstances of the case considers necessary including any one or more of the following:
 - (i) that the probationer shall reside at a probation hostel, at the home of his parent or guardian or relative or at some other place;
 - (ii) that the probationer shall attend an educational institution to be recommended by the probation officer;
 - (iii) that the probationer shall remain indoors at his place of residence, be it at the probation hostel or at a home, during hours to be specified.

(5) Without prejudice to the powers of the Court to make an order under section 91, the payment of sums by way of damages for injury or compensation for loss shall not be included amongst the requirements of a probation order.

(6) Before making a probation order containing requirements as to residence, the Court—

- (a) shall consider the home surroundings of a child; and
- (b) if the order requires a child to reside in a probation hostel, shall specify in the order the period for which he is

so required to reside, but that period shall not extend beyond twelve months from the date of the order.

(7) The Court For Children which makes a probation order shall—

(a) immediately give a copy of the order—

- (i) to the probationer;
- (ii) to the probation officer or other person under whose supervision the probationer is placed; and
- (iii) to the person in charge of the probation hostel or other place in which the probationer is required by the order to reside; and

(b) except if it is itself the Supervising Court, send to the Court For Children for the district or area named in the order in which the probationer is required to reside during the probation period a copy of the order together with such documents and information relating to the case as it considers likely to be of assistance to that Court.

(8) A Court For Children on making a probation order may, if it thinks it is expedient for the reformation of the probationer, give the probationer to the charge of any person who consents to accept the probationer, on that person's giving security for the good behaviour of the probationer; and the provisions of the Criminal Procedure Code on forfeiture of bonds shall apply in relation to the security.

Failure to comply with probation order

99. (1) If at any time during the probation period it appears to a Supervising Court that a probationer has failed to comply with any of the requirements of the probation order under paragraph 98(4)(a) or (c), the Supervising Court may issue—

- (a) a summons requiring the probationer to appear at the place and time specified in the summons; or
- (b) a warrant for his arrest.

(2) A warrant under subsection (1) shall not be issued except on information in writing and on oath submitted by the probation officer.

(3) A summons or warrant issued under this section shall direct the probationer to appear or be brought before the Supervising Court.

(4) A probationer when arrested under subsection (1) may, if not brought immediately before the Supervising Court under subsection (3)—

(a) be detained in a place of detention; or

(b) be released on bail, with or without sureties,

until such time as he can be brought before the Supervising Court.

(5) If it is proved to the satisfaction of the Supervising Court that a probationer has failed to comply with any of the requirements of the probation order under paragraph 98(4)(a) or (c) the Court may, without prejudice to the continuance of the probation order—

(a) impose on him a fine not exceeding five thousand ringgit; or

(b) deal with the probationer for the offence in respect of which the probation order was made in any manner in which the Court could deal with him if the Court had just found him guilty of that offence.

(6) A fine imposed under this section for failing to comply with any of the requirements of a probation order shall be—

(a) deemed for the purpose of any written law to be a sum adjudged to be paid on a conviction; and

(b) taken into account in making any subsequent order upon the probationer under this section or section 100.

(7) For the purposes of paragraph (6)(a), “a sum adjudged to be paid on a conviction” includes any costs, damages or compensation adjudged to be paid on a conviction, of which the amount is ascertained by the conviction.

(8) A probationer who fails to comply with paragraph 98(4)(b) shall be dealt with under section 100.

Commission of further offence

100. (1) If it appears to the Supervising Court that—

- (a) a probationer has been found guilty by a Court of an offence committed during the probation period; and
- (b) the probationer has been dealt with in respect of that offence,

the Supervising Court may issue—

- (aa) a summons requiring the probationer to appear at the place and time specified in the summons; or
- (bb) a warrant for his arrest.

(2) A warrant under subsection (1) shall not be issued except on information in writing and on oath submitted by the probation officer.

(3) A summons or warrant issued under this section shall direct the probationer to appear or to be brought before the Supervising Court.

(4) If it is proved to the satisfaction of the Supervising Court that a probationer in whose case the order was made has been found guilty and dealt with in respect of an offence committed during the probation period, the Court may deal with him for the offence for which the order was made in any manner in which the Court could deal with him if the Court had just found him guilty of that offence.

Effects of probation

101. (1) The finding of guilt for an offence for which an order is made under this Chapter placing the offender on probation shall be deemed not to be a conviction for any purpose other than for the purposes of—

- (a) the proceedings in which the order is made; and
- (b) any subsequent proceedings which may be taken against a child under this Chapter.

- (2) Subsection (1) shall not affect—
- (a) the right of any such child—
 - (i) to appeal against a finding of guilt; or
 - (ii) to rely on a finding of guilt in bar of any subsequent proceedings for the same offence; or
 - (b) the reversioning or restoration of any property in consequence of the finding of guilt of any such child.

Amendment of probation order

102. (1) If the Supervising Court is satisfied that a probationer proposes to change or has changed his residence from the district or area named in the probation order to another district or area, the Court may, and if an application on that behalf is made by the probation officer, shall, by order amend the probation order by substituting for the district or area named therein the district or area where the probationer proposes to reside or is residing.

(2) If the probation order contains requirements which, in the opinion of the Supervising Court, cannot be complied with unless the probationer continues to reside in the district or area named in the order, the Supervising Court shall not amend the order except in accordance with subsection (4).

(3) If a probation order is amended under subsection (1), the Supervising Court shall send to the Court For Children for the new district or area named in the order a copy of the order together with such documents and information relating to the case as it considers likely to be of assistance to the Court For Children.

(4) Without prejudice to subsections (1) and (3) the Supervising Court may, on an application made by the probation officer or by the probationer, by order amend the probation order by—

- (a) revoking any of the requirements in the probation order; or
- (b) inserting in the probation order, either in addition to or in substitution for any such requirement, any requirement which could be included in the order if the order were then being made by the Court in accordance with section 98.

(5) The Supervising Court shall not amend a probation order under subsection (4) by—

- (a) reducing the probation period; or
- (b) extending that period such that the probation period becomes more than three years.

Discharge of probation order

103. (1) The Court For Children by which a probation order was made or the Supervising Court may, on an application made by the probation officer, the parent or guardian of the probationer or the probationer, discharge the probation order.

(2) The Court For Children shall not deal with an application under subsection (1) without summoning the probationer unless the application is made by the probation officer.

(3) If—

- (a) the Court discharges a probation order under subsection (1); or
- (b) a probationer is dealt with under section 99 or 100 for the offence for which he was placed on probation,

the probation order shall cease to have effect.

Court to give copies of amending or discharging order to probation officer

104. On the making of an order amending or discharging a probation order under section 102 or 103 respectively—

- (a) the Court shall forthwith give sufficient copies of the amending or discharging order to the probation officer; and
- (b) the probation officer shall give a copy of the amending or discharging order to—
 - (i) the probationer; and
 - (ii) the person in charge of the probation hostel or place in which the probationer is or was required by the order to reside.

PART XI

IN THE CARE OF FIT AND PROPER PERSON

Child placed in the care of fit and proper person

105. (1) This section shall apply in relation to an order made under this Act placing a child in the care of a fit and proper person.

(2) An order placing a child in the care of a fit and proper person may be varied or revoked by the Court For Children or the Supervising Court on an application made by—

- (a) the parent or guardian of the child;
- (b) the Protector; or
- (c) the probation officer,

as the case may be.

(3) If—

- (a) on an application made by the parent or guardian or any near relative of a child ordered to be placed in the care of a fit and proper person under subsection (1); and
- (b) the Court For Children or the Supervising Court having power to vary or revoke the order is satisfied that the child is not being brought up in accordance with his religion as decided by his parent or guardian,

the Court For Children or the Supervising Court, as the case may be, shall, unless a satisfactory undertaking is given by the person in whose care the child has been placed, either revoke the order or vary the order in such manner as the Court thinks best to secure that the child is from that time onwards brought up in accordance with that religion.

Child who escapes or is removed from the care of fit and proper person

106. (1) A child who escapes from a person in whose care he has been placed under this Act may be—

- (a) arrested without a warrant; and

- (b) brought before the Court For Children by which the order was made or before the Supervising Court.

(2) The Court For Children or the Supervising Court before which a child is brought under subsection (1) shall immediately inquire into the case and after taking into account the recommendation of the Protector or probation officer, as the case may be—

- (a) order the child to be brought back to that person, if he is willing to receive the child; or
- (b) make an order which the Court could have made if the child had been brought before the Court as being a child having no parent or guardian.

Offence of removing or helping a child to escape from the care of fit and proper person

107. (1) Any person who—

- (a) removes a child from the care of a fit and proper person without lawful authority;
- (b) knowingly assists or induces, directly or indirectly, a child to escape from the person in whose care he has been placed; or
- (c) knowingly harbours or conceals a child who has so escaped, or prevents him from returning to the care of such person,

commits an offence and shall on conviction be liable to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding five years or to both.

PART XII

CONTRIBUTION ORDERS

Contribution by parent or guardian or other person

108. (1) If an order is made—

- (a) placing a child in the care of a fit and proper person;

- (b) sending a child to a probation hostel, an approved school, a Henry Gurney School, or an approved institution or centre; or
- (c) placing a child in a place of refuge,

the Court For Children making the order may, at the same time or subsequently, make a contribution order requiring the parent or guardian or other person having custody of the child—

- (aa) at the time of the commission of the offence resulting in the order;
- (bb) prior to an order made under subsection (1); or
- (cc) immediately before the commencement of any proceedings,

to make such contribution or monthly contributions in such manner as the Court thinks fit, having regard to the means of the parent or guardian or the other person.

(2) A Court For Children shall not make any contribution order under subsection (1) if the Court considers that it would not be just for the contribution order to be made having regard to the circumstances and means of the parent or guardian or the other person.

(3) If a contribution order is made pursuant to subsection (1), it shall be the duty of the parent or guardian or the other person against whom the contribution order is made to comply with the contribution order.

(4) All sums payable under a contribution order shall be paid into such Court or to such authority as the Court making the order shall direct.

(5) The Court For Children making any such contribution order may, from time to time, on an application made by—

- (a) the parent or guardian or the other person against whom the contribution order is made;
- (b) the Protector; or
- (c) the probation officer,

rescind, make anew or vary the order as the Court deems fit on proof of change in circumstances of the person against whom the order is made or for other good cause being shown to the satisfaction of the Court.

(6) An order under subsection (1) shall not be made without giving the parent or guardian of the child or the other person having custody of the child an opportunity to be heard.

(7) Notwithstanding subsection (6), an order under subsection (1) may be made if the Court is satisfied on information given by a Protector or probation officer, as the case may be, that the parent or guardian or the other person, having been required to attend, has failed to do so, or is not available or cannot be found within a reasonable time.

(8) A contribution order shall remain in force—

(a) in the case of a child ordered to be placed in the care of a fit and proper person, so long as the order is in force; and

(b) in the case of a child ordered to be sent to a place of refuge, a probation hostel, an approved school, a Henry Gurney School, or an approved institution or centre, until he ceases to be under the care of the person in charge for the time being of the place of refuge, probation hostel, approved school, Henry Gurney School, or approved institution or centre.

(9) A contribution is not payable under a contribution order in respect of any period during which—

(a) a child ordered to be sent to an approved school or a Henry Gurney School is out with permission or under the supervision of a probation officer; or

(b) a child ordered to be sent to a place of refuge is on leave of absence from the place of refuge or from being under the supervision of a Social Welfare Officer.

(10) If any person wilfully neglects to comply with a contribution order, a Magistrate may, for every breach of the order—

(a) by warrant, direct the amount due to be levied in the manner by law provided for levying fines imposed by a Magistrate; or

(b) sentence the person to imprisonment for a term not exceeding one month for each month's contribution remaining unpaid.

(11) The term of imprisonment imposed under paragraph (10)(b) shall terminate when the amount of contribution due is paid.

PART XIII

INVESTIGATION, ARREST, SEARCH, SEIZURE, *ETC.*

Power of investigation

109. (1) A Protector or police officer may investigate the commission of any offence under this Act.

(2) A Protector when acting under this Part shall, on demand, declare his office to the person against whom he is acting or from whom he seeks any information.

(3) Every person required by a Protector or police officer to give information or produce any document or other things relating to the commission of any offence which is in that person's power to give shall be legally bound to give the information or produce the document or other things.

Power to arrest without warrant

110. (1) Any police officer may arrest without a warrant any person whom he reasonably believes—

(a) has committed or attempted to commit; or

(b) employed or aided any other person to commit or abet the commission of,

an offence against this Act, and may search any person so arrested.

(2) Any person arrested under subsection (1) shall, after the arrest, be dealt with as provided for by the Criminal Procedure Code.

Search by warrant

111. (1) If it appears to a Magistrate upon written information on oath that there is reasonable cause to believe that in any premises there is any evidence of—

- (a) a child who is in need of protection;
- (b) a child who is being concealed, confined or detained in contravention of this Act; or
- (c) the commission of an offence against this Act,

the Magistrate may issue a search warrant authorizing a Protector or police officer to whom it is directed, at any reasonable time by day or night and with or without assistance, to—

- (aa) enter and search the premises;
- (bb) inspect, make copies of, or take extracts from, any book, record or document;
- (cc) search any person who is in or on the premises, and for the purposes of that search detain the person and remove him to any place as may be necessary to facilitate the search, and seize and detain any article found on that person; and
- (dd) search and remove the child—
 - (i) who is in need of protection;
 - (ii) who is being concealed, confined or detained in contravention of this Act; or
 - (iii) in respect of whom an offence against this Act has been committed,

to a place of safety or place of refuge.

(2) If a child has been placed in a place of safety pursuant to paragraph (1)(dd), the Protector shall, as soon as practicable, inform the parent or guardian who has lawful custody of the child the whereabouts of the child.

(3) Whenever it is necessary to do so, a Protector or police officer exercising any power under subsection (1) may—

- (a) break open any outer or inner door or window of any premises in order to effect entry into the premises;

- (b) forcibly enter any premises and any part of the premises;
- (c) remove by force any obstruction to entry, search, seizure, detention or removal as he is empowered to effect under subsection (2);
- (d) detain any person found in or on any premises searched under subsection (1) until the search is completed.

(4) A female person shall not be searched under this section or section 110 except by another female person and a male person shall not be searched except by another male person and such search shall be carried out with strict regard to decency.

(5) A person who by force, restraint, threats, inducement or other means causes any child who is in need of protection to conceal himself in or to leave any premises being searched or about to be searched by a Protector or a police officer under this section, with the intent that the search by such Protector or police officer may be evaded or obstructed, commits an offence.

(6) It shall be the duty of the owner or occupier of any premises searched under this section and any person found in or on the premises to—

- (a) provide the Protector or police officer with all such facilities and assistance as he may reasonably require; and
- (b) give the Protector or police officer all reasonable information required by him.

Search without warrant

112. If a Protector or police officer has reasonable cause to believe that by reason of delay in obtaining a search warrant under section 111—

- (a) the investigation would be adversely affected; or
- (b) the object of the entry is likely to be frustrated,

he may exercise in, and in respect of, the premises all the powers referred to in that section in as full and ample a manner as if he was authorized to do so by a warrant issued under that section.

Power to examine person

113. (1) A Protector or police officer investigating an offence under this Act may order any person—

- (a) acquainted with the facts and circumstances of an offence to attend before him to be examined orally in relation to any matter which may assist in the investigation into the offence; or
- (b) to produce any child or any book, article or document which may assist in the investigation into the offence.

(2) A person to whom an order has been given under paragraph (1)(a)—

- (a) shall attend in accordance with the terms of the order to be examined; and
- (b) during such examination—
 - (i) shall disclose all information which is within his knowledge or which is available to him in respect of the matter in relation to which he is being examined;
 - (ii) shall answer any question put to him truthfully and to the best of his knowledge and belief; and
 - (iii) shall not refuse to answer any question on the ground that it tends to incriminate him.

(3) A person to whom an order has been given under paragraph (1)(b)—

- (a) shall produce the child unless it can be shown to the satisfaction of the Protector that the child—
 - (i) is no longer under the custody or control of that person; and
 - (ii) that the whereabouts of the child are not known to that person; and
- (b) shall not conceal, destroy, alter or dispose of any book, article or document specified in the order.

(4) A person to whom an order is given under subsection (1) shall comply with the order and with subsections (2) and (3) notwithstanding any written law or rule of law to the contrary.

(5) A Protector examining a person under paragraph (1)(a) shall record in writing any statement made by the person so examined and the statement so recorded shall be signed by the person making it or affixed with his thumb-print, as the case may be, after—

(a) it has been read to him in the language in which he made it; and

(b) he has been given an opportunity to make any correction he may wish.

(6) If a person examined under this section refuses to sign or affix his thumb-print on the statement, the Protector shall endorse on the record under his hand the fact of such refusal and the reason for it, if any, stated by the person examined.

(7) Notwithstanding any written law or rule of law to the contrary, the record of an examination under paragraph (1)(a) and any book, article or document produced under paragraph (1)(b) shall be admissible in evidence in any proceedings in any Court for or in relation to an offence under this Act, regardless of whether such proceedings are against—

(a) the person who was examined;

(b) the person who produced the book, article or document;
or

(c) any other person.

(8) Any person who contravenes this section commits an offence.

Inspection

114. If an order is made placing a child in the care of a fit and proper person or requiring the parent or guardian of the child to exercise proper care and guardianship over him, the Protector

or probation officer or any Social Welfare Officer authorized in writing by the Protector or probation officer may, so long as the order is in effect—

- (a) at any time visit and inspect the place where such child in respect of whom the order is made lives or is believed to live or to be; and
- (b) inquire into the conditions and circumstances of the child, and for the purposes of such inquiry, may require any person to answer any question as he may think proper to ask and such person shall be legally bound to answer such question truthfully to the best of his knowledge or belief.

Obstruction

115. Any person who—

- (a) refuses the Protector or Social Welfare Officer access to any premises, or fails to submit to a search by a person authorized to search him under this Act;
- (b) assaults, obstructs, hinders, delays or attempts to assault, obstruct, hinder or delay the Protector or Social Welfare Officer in the execution of his duty under this Act;
- (c) fails to comply with any lawful demand, order or requirement of a Protector or Social Welfare Officer in the execution of his duty under this Act;
- (d) omits, refuses or neglects to give to a Protector or Social Welfare Officer any information which may be reasonably required of him and which he is empowered to give;
- (e) fails to produce to, or conceals or attempts to conceal from, a Protector or Social Welfare Officer, any child or any book, article or document in relation to which the Protector or Social Welfare Officer has reasonable grounds for believing that an offence under this Act has been or is being committed;
- (f) rescues or endeavours to rescue or causes to be rescued any thing which has been duly seized; or
- (g) destroys any thing to prevent the seizure of the thing, or the securing of the thing,

commits an offence and shall on conviction be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding two years or to both.

Protection of informers

116. (1) Any person who gives any information that a child is in need of protection shall not incur any liability for defamation or otherwise in respect of the giving of such information.

(2) The giving of any information that a child is in need of protection shall not, in any proceedings before any Court or in any other respect, be held to constitute—

(a) a breach of professional etiquette or ethics; or

(b) a departure from accepted standards of professional conduct.

(3) Except as provided in subsections (4) and (6), a witness in any civil or criminal proceedings shall not be obliged or permitted to disclose the name and address of an informer or the substance of the information received from him or to state any matter which might lead to his discovery.

(4) If any book, record or document which is in evidence or liable to inspection in any civil or criminal proceedings contains any entry in which any informer is named or described or which might lead to his discovery, the Court shall cause all such passages to be concealed from view or to be obliterated so far as may be necessary to protect the informer from discovery.

(5) This section shall apply to a registered medical practitioner, any member of the family or a child care provider who gives information under section 27, 28 or 29 respectively in the same manner as they apply to a person who gives information that a child is in need of protection.

(6) If during the trial for any offence against this Act, the Court after full inquiry into the case believes that the informer wilfully made in his complaint a material statement which he knew or believed to be false or did not believe to be true, or if in any other proceedings the Court is of the opinion that justice

cannot be fully done between the parties in that proceedings without the discovery of the informer, it shall be lawful for the Court to require the production of the original complaint, if in writing, and permit inquiry and require full disclosure concerning the informer.

PART XIV

MISCELLANEOUS

Power of Court For Children conferred on High Court

117. Nothing in this Act other than sections 96 and 97 shall affect the powers of the High Court and all the powers which may be exercised under this Act by a Court For Children in respect of a child may in like manner be exercised by the High Court.

Register

118. The Registrar shall cause to be kept and maintained, in such form as may be prescribed, a register to be known as the “Register of Children in Need of Protection”.

Contents of Register

119. The Register shall contain—

- (a) details of every case or suspected case of a child in need of protection; and
- (b) such other matters in relation to such case or suspected case as the Director General may from time to time determine.

Access to Register

120. (1) Details contained in the Register shall be furnished to—

- (a) any Court when there is before the Court any proceedings concerning a child in need of protection;
- (b) any Court when so requested by the Court; and

(c) the Director General, a Protector, any police officer or any member of a Child Protection Team or Child Welfare Committee when any of them requires such details for the purposes of any proceedings under this Act or for the purposes of taking action in respect of, or providing assistance to, a child in need of protection.

(2) Details contained in the Register may be furnished to—

(a) persons engaged in *bona fide* research whose access to the Register is authorized by the Director General for that purpose; or

(b) persons or classes of persons authorized by the Director General to have access to the Register on the grounds that their access to the Register will promote the protection of a child or children.

(3) Details furnished under this section shall not include any information which discloses or likely to lead to the disclosure of the identity of any person who has given any information that a child is in need of protection.

Offence in respect of Register

121. Any person who furnishes to any other person any details contained in the Register other than pursuant to section 120 commits an offence and shall on conviction be liable to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding two years or to both.

Certificate of Registrar to be evidence

122. A certificate purporting to be under the hand of the Registrar as to any entry in the Register, or as to any matter or thing which he is authorized by this Act or any regulation made under this Act to do or to make shall, until the contrary is proved, be admitted in evidence as proof of the facts stated therein as at the date of the certificate.

Protection against suit and legal proceedings

123. An action shall not lie and prosecution shall not be brought, instituted or maintained in any Court against the Government, Minister, Director General, Protector, Social Welfare Officer, probation officer, police officer or medical officer for anything done or omitted to be done under this Act—

- (a) in good faith;
- (b) in the reasonable belief that it was necessary for the purpose intended to be served thereby; or
- (c) for carrying into effect the provisions of this Act.

Public servant

124. All officers appointed or authorized under this Act shall be deemed to be public servants within the meaning of the Penal Code.

General penalty

125. If no penalty is expressly provided for an offence under this Act, a person who commits such offence shall on conviction be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding two years or to both.

Institution and conduct of prosecution

126. (1) A prosecution in respect of an offence under this Act shall not be instituted except by or with the consent in writing of the Public Prosecutor.

(2) Notwithstanding that he has been authorized under the Criminal Procedure Code to prosecute, a person who is the investigating officer of an offence under this Act shall not prosecute the case in respect of that offence.

Service of document

127. (1) Service of document on any person shall be effected by—

- (a) delivering the document to that person or by delivering the document at the last known place of residence of that person to an adult member of his family;

- (b) leaving the document at the usual or last known place of residence or business of that person in a cover addressed to that person; or
- (c) forwarding the document by registered post in a prepaid letter addressed to that person at his usual or last known place of residence or business.

(2) If a document is served by prepaid registered post it shall be deemed to have been served on the day succeeding the day on which the document would have been received in the ordinary course of post.

Power to make regulations

128. (1) The Minister may make such regulations as appears to him to be necessary or expedient for carrying out the provisions of this Act.

(2) Without prejudice to the generality of the powers conferred by subsection (1), the Minister may make regulations for all or any of the following purposes:

- (a) to prescribe the conduct, management, discipline and control of approved schools, Henry Gurney Schools, probation hostels or centres;
- (b) to provide for the maintenance, discipline, treatment and education, vocational or otherwise, of the children or other persons detained in approved schools or Henry Gurney Schools including—
 - (i) the powers, duties and functions of the Board of Visitors;
 - (ii) the grant of leave of absence to children and other persons detained;
 - (iii) visits to, and inspections of, the schools by persons or bodies of persons appointed by the Minister from time to time for any area or areas; and
 - (iv) the order or punishment for breaches of discipline of children or other persons detained;

- (c) to prescribe the duties and responsibilities of probation officers;
- (d) to prescribe the constitution and duties of Child Welfare Committees;
- (e) to prescribe the qualifications, duties and training of advisers;
- (f) to provide for the care, control, detention, discipline, admission, discharge and aftercare, temporary absence, maintenance, education and training of children placed in places of safety and places of refuge;
- (g) to regulate the management, administration, visitation and inspection of places of safety and places of refuge;
- (h) to provide for—
 - (i) the care, maintenance and education of children placed in the care, custody or control of any fit and proper person under the provisions of this Act; and
 - (ii) the duties of such fit and proper person in taking care of the child;
- (i) to prescribe the selection and qualifications of fit and proper persons with whom a child in need of care and protection may be placed;
- (j) to require the persons in charge of places of safety and places of refuge to submit to the Director General returns, reports and information in respect of children placed therein;
- (k) to prescribe the duties and responsibilities of foster parents;
- (l) to prescribe the composition, duties, functions and procedures of conducting the business of Boards of Visitors;
- (m) to prescribe the procedures and practice of Child Protection Teams;
- (n) to prescribe the particulars, photographs or other means of identification to be furnished in relation to a child in need of protection;

- (o) to require the furnishing of information as to changes of address of every child in need of protection and of the persons having custody of the child, and the transfer of records and registers in such cases;
- (p) to prescribe the records to be kept in respect of every child in need of protection and the manner in which the records shall be kept;
- (q) to prescribe the keeping and maintenance of Registers;
- (r) to prescribe the forms to be used and information to be furnished for any of the purposes of this Act;
- (s) to prescribe the form of notices, orders, warrants, summonses and bonds under this Act and the manner of service thereof;
- (t) to prescribe the functions, powers and duties of officers and persons conferred with powers under this Act and the manner and conditions in and under which the powers conferred by this Act shall be exercised by the officers or persons;
- (u) to prescribe any other matter required or permitted to be prescribed under this Act; and
- (v) to provide for any other matter which the Minister deems expedient or necessary for the purposes of this Act.

(3) Regulations made under subsection (1) may provide that the contravention of any provision in the regulations is an offence and that the person who commits the offence is punishable on conviction with a fine or a term of imprisonment or both but may not provide for the fine to exceed five thousand ringgit or the term of imprisonment to exceed two years.

PART XV

SAVINGS AND TRANSITIONAL PROVISIONS

Interpretation

129. In this Part—

“repealed Acts” means the Juvenile Courts Act 1947 [*Act 90*], the Women and Girls Protection Act 1973 [*Act 106*] and the Child Protection Act 1991 [*Act 468*] repealed under this Act;

“Juvenile Court” means the Juvenile Court established under the Juvenile Courts Act 1947;

“appointed date” means the date on which this Act comes into operation.

Repeal

130. The Juvenile Courts Act 1947, the Women and Girls Protection Act 1973 and the Child Protection Act 1991 are repealed.

References to Juvenile Court, etc.

131. (1) All references to the Juvenile Court in any written law, or in any judgment, sentence, order, ruling or decision made under the repealed Acts and subsisting immediately before the appointed date shall, on the appointed date, be construed as references to the Court For Children established under this Act.

(2) The judgment, sentence, order, ruling or decision of the Juvenile Court, Supervising Court, High Court, Sessions Court or Magistrate’s Court under the repealed Acts shall on the appointed date be deemed to have been made under this Act and continue to be in force and have effect.

(3) Any inquiry, trial or proceedings done, taken or commenced in or before the Courts referred to in subsection (2) before the appointed date in so far as it relates to a person under the age of eighteen years shall be deemed to have been done, taken or commenced in or before the Court For Children, Supervising Court, High Court, Sessions Court or Magistrate’s Court under this Act and may accordingly be continued and concluded on and after the appointed date.

(4) Any inquiry, trial or proceedings done, taken or commenced under the Women and Girls Protection Act 1973 before the appointed date and are still pending shall, in so far as it relates to a female person aged eighteen years and above and any offence under the same Act, be continued and concluded under the same Act and for this purpose it shall be treated as if that Act had not been repealed.

Continuance of Council, etc.

132. (1) The Co-ordinating Council for the Protection of Children, Child Protection Teams, Juvenile Welfare Committees, Boards of Visitors and committees established, and officers and persons appointed, under the repealed Acts shall, on the appointed date, be deemed to have been established or appointed under this Act and shall have the powers, rights, privileges, liabilities, duties and obligations conferred on the Council, Child Protection Teams, Child Welfare Committees, Boards of Visitors and committees established under this Act.

(2) The members of the Council, Teams, Committees, Boards and committees established under the repealed Acts and any officers and persons appointed under the repealed Acts holding office on the day preceding the appointed date shall continue to hold office under this Act until their terms of appointment expire or they resign or their appointments are revoked in accordance with this Act and shall have the same powers, rights, privileges, liabilities, duties and obligations as if they had been appointed under this Act.

(3) Every act or thing done, taken or commenced by the members of the Council, Teams, Committees, Boards, committees officers and persons referred to subsections (1) and (2), and the Board of Visiting Justices, under the repealed Acts before the appointed date shall, on and after the appointed date, be deemed to have been done, taken or commenced under this Act.

Continuance of rules, etc.

133. All rules, regulations, orders, notices, forms, directions and authorization letters made, issued or given under the repealed Acts shall, in so far as they are consistent with this Act, continue in force until revoked or replaced by this Act.

Institutions established or appointed

134. All approved schools, Henry Gurney Schools, places of detention, probation hostels, places of safety, places of refuge and other institutions or centres established or appointed under the repealed Acts shall on the appointed date be deemed to have been established or appointed under this Act.

Prevention of anomalies

135. (1) The Minister may, whenever it appears to him necessary or expedient to do so, whether for the purpose of removing difficulties or preventing anomalies in consequence of the enactment of this Act, by order published in the *Gazette* make such modifications to any provision in this Act as he thinks fit but the Minister shall not exercise the powers conferred by this section after the expiration of two years from the appointed date.

(2) In this section, “modifications” includes amendments, additions, deletions, substitutions, adaptations, variations, alterations and non-application of any provision of this Act.

FIRST SCHEDULE

[Paragraphs 15(1)(c) and 17(1)(i)]

Offences under sections 299 to 301, 304 to 304A, 305 to 309A, 312 to 319, 321 to 322, 324, 326 to 340, 345 to 351, 353 to 358, 360 to 362, 364 to 373A, 374 to 375, 377, 377A, 377C to 377E of the Penal Code.

SECOND SCHEDULE

[Section 45]

1. Offences punishable under Part VI of this Act.
 2. Offences—
 - (a) punishable under sections 309, 312 to 313, 354, 370 to 373, 373A, 376 to 377 of the Penal Code; or
 - (b) involving any acts or matters defined in sections 321 to 322, 339 to 340, 350 to 351, 360 to 362 of the Penal Code.
-

LAWS OF MALAYSIA**Act 611****CHILD ACT 2001**

LIST OF AMENDMENTS

Amending law	Short title	In force from
P.U. (A) 7/2003	Child (Modification) Order 2003	01-08-2002

LAWS OF MALAYSIA**Act 611****CHILD ACT 2001**

LIST OF SECTIONS AMENDED

Section	Amending authority	In force from
30	P.U. (A) 7/2003	01-08-2002
