

# CHILD PROTECTION ACT

Act 30 of 1994 – 1 April 1995

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## CHILD PROTECTION ACT

### 1. Short title

This Act may be cited as the Child Protection Act.

### 2. Interpretation

In this Act—

“child” means any unmarried person under the age of 18;

“child mentor” means a person registered as such by the Permanent Secretary;

“Code of Ethics” means the Code of Ethics for mentors, set out in the First

Schedule;

“Committee” means the Child Mentoring Committee referred to in section 3B;

“Court” means the Juvenile Court having jurisdiction over the district in which the child is, or is reasonably believed to be, found;

“film” has the same meaning as in the Films Act;

“foster home” means a home registered under regulations made under this Act or approved by the Minister;

“gaming house” has the same meaning as in the Gaming Act;

“harm” includes physical, sexual, psychological, emotional or moral injury, neglect, ill-treatment, impairment of health or development;

“indecent photograph” includes an indecent film, a copy of an indecent photograph or film, and an indecent photograph comprised in a film;

“mentoring order” means an order issued by the Court under section 3D;

“Minister” means the Minister to whom responsibility for the subject of child development and family welfare is assigned;

“parent” means the father, mother or legal guardian of a child and includes any person in charge of a child;

“Permanent Secretary” means the Permanent Secretary of the Ministry or any public officer designated by him to act on his behalf;

“photograph” includes—

- (a) the negative as well as the positive version; and
- (b) data stored on a computer disc or by other electronic means which is capable of conversion into a photograph;

“place of safety” means any place designated by the Minister, and includes a foster home, a convent, a charitable institution, an institution for children and a hospital;

“pseudo-photograph” means an image, whether made by computer graphics or by any other means, which appears to be a photograph;

“Scheme” means the Child Mentoring Scheme set up under section 3A.

[S. 2 amended by Act 15 of 1998; s. 22 (1) (a) of Act 22 of 2003 w.e.f. 9 August 2003; s. 3 of Act 40 of 2008 w.e.f. 20 December 2008.]

### **3. Enquiry**

Where the Permanent Secretary has reasonable cause to suspect that a child is being exposed to harm and is in need of assistance, he may summon any person, with or without the child, to give evidence for the purpose of enquiring into the matter.

#### **3A. Child Mentoring Scheme**

(1) The Minister shall set up a Scheme which shall be known as the Child Mentoring Scheme.

(2) The object of the Scheme shall be to assist children between the ages of 10 and 16 who—

- (a) are victims of neglect;
- (b) suffer from mild behavioural problems;
- (c) are in distress; or
- (d) have problems of social adaptation.

(3) (a) No child shall be placed under the Scheme unless there is a mentoring order in relation to him.

(b) (i) Where a child is placed under the Scheme, he shall be assigned a child mentor who shall provide him with guidance, advice and such sense of stability as may be lacking in the life of the child.

(ii) A child mentor shall not be assigned more than 3 children under the Scheme.

(c) A child placed under the Scheme shall remain in the custody of his parents.

(4) (a) The Scheme shall be administered by the Permanent Secretary, with the assistance of the Committee.

(b) The functions of the Permanent Secretary under the Scheme shall be to—

(i) receive and consider applications from volunteers for registration as child mentor;

(ii) register, in consultation with the Committee, child mentors;

(iii) provide child mentors with such guidance and assistance as may be necessary for them to effectively carry out their functions and duties under a mentoring order;

(iv) identify children who may need assistance and protection and apply to the District Magistrate for a mentoring order where he deems it necessary;

(v) supervise all placements of children and activities of child mentors under the Scheme;

(vi) forward to the Court a quarterly progress report, or any other report at such interval as may be decided by the Court, on every child subject of a mentoring order;

(vii) carry out such other functions as may be necessary for the effective implementation of the Scheme.

[S. 3A inserted by s. 4 of Act 40 of 2008 w.e.f. 20 December 2008.]

### **3B. Child Mentoring Committee**

(1) There shall be, for the purposes of this Act, a Child Mentoring Committee, which shall consist of—

(a) a Chairperson, to be appointed by the Minister;

(b) a representative of the Ministry;

(c) a representative of the Attorney-General's Office;

(d) a representative of the Commissioner of Police;

(e) a representative of the Ministry responsible for the subject of education;

(f) a psychologist to be appointed by the Permanent Secretary; and

(g) 2 representatives of non-governmental organisations who have wide experience in issues relating to children, to be appointed by the Minister.

(2) The functions of the Committee shall be to—

(a) advise the Permanent Secretary and assist him in administering and implementing the Scheme;

(b) review at regular intervals the criteria for the recruitment of volunteers as child mentors and advise the Permanent Secretary accordingly;

(c) conduct interviews for the recruitment of child mentors and make recommendations to the Permanent Secretary;

(d) consider the suitability of a child mentor in relation to a child for the purpose of a mentoring order;

- (e) periodically assess and evaluate the progress of children placed under the Scheme and submit progress reports to the Permanent Secretary;
- (f) review at regular intervals the Code of Ethics, and advise the Permanent Secretary accordingly; and
- (g) carry out such other functions as the Permanent Secretary may assign or delegate to it for the proper administration and effective implementation of the Scheme.

(3) The Committee may co-opt such other persons with relevant expertise not already available in the Committee, and set up such subcommittees as it considers necessary to assist it in performing its functions under this Act.

(4) (a) There shall be a Secretary to the Committee who shall be a public officer appointed by the Permanent Secretary.

(b) The duties of the Secretary to the Committee shall be to—

- (i) ensure the smooth coordination of the activities of the Committee and the Permanent Secretary;
- (ii) record all deliberations of the Committee;
- (iii) assist the Permanent Secretary in keeping a register of child mentors, including a list of child mentors whose registration has been cancelled; and
- (iv) carry out such other duties as may be assigned to him by the Committee.

(5) The Committee shall meet at such place and time as the Chairperson may determine.

(6) Four members of the Committee shall constitute a quorum at any meeting of the Committee.

(7) Subject to the other provisions of this section, the Committee shall regulate its proceedings in such manner as it thinks fit, provided that a co-opted member shall have no voting rights.

(8) The members of the Committee and co-opted persons shall be paid such fees and allowance as may be determined by the Minister.

[S. 3B inserted by s. 4 of Act 40 of 2008 w.e.f. 20 December 2008.]

### **3C. Child mentor**

(1) A person shall not be registered or act as a child mentor unless—

- (a) he has attained the age of 30;
- (b) he is a person of good character and reputation, with relevant qualifications or proven experience in matters of children's rights, child development or child psychology;
- (c) he has demonstrated ability to work in a team;
- (d) he has good communication and listening skills;
- (e) he is in good physical and mental health;
- (f) he enjoys a stable family life; and
- (g) he is willing to work flexible hours.

(2) A child mentor who has been assigned a child pursuant to a mentoring order shall—

- (a) not enter into any contract with the child unless so authorised by a mentoring order;

- (b) comply with any order made by the Court under the mentoring order;
- (c) by the end of each month, submit to the Permanent Secretary, a report on the programme of work undertaken with the child;
- (d) submit quarterly progress reports to the Permanent Secretary on the situation and evolution of the child;
- (e) where he reasonably believes that the child is suffering or is likely to suffer harm, immediately report the matter to the Permanent Secretary;
- (f) notify, at least 5 days in advance, the Permanent Secretary of weekly activities he intends to undertake for the purpose of mentoring;
- (g) abide by such requirements as may be prescribed for the effective implementation of the Scheme.

[S. 3C inserted by s. 4 of Act 40 of 2008 w.e.f. 20 December 2008.]

### **3D. Mentoring order**

(1) Where the Permanent Secretary reasonably believes that—

- (a) a child may require assistance under the Scheme;
- (b) a child cannot adequately be dealt with under the Juvenile Offenders Act;
- (c) the parents of a child are refusing to take or cannot take any measures to provide the child with the assistance and support that he needs;
- (d) it is in the best interest of a child to be placed under the Scheme; and
- (e) there is no alternative means of providing assistance and support to a child,

he may, with or without the consent of the parents, apply to the District Magistrate, in such form as may be prescribed, for a mentoring order in order to have the child placed under the Scheme.

(2) Subsection (1) shall be without prejudice to the powers of the Permanent Secretary under section 4.

(3) Every application for a mentoring order shall, as far as possible, be accompanied by—

- (a) a report from the Permanent Secretary which shall specify the reasons why the child should be placed under the Scheme, the name of the child mentor who shall follow the child and the reasons why the child mentor has been chosen;
- (b) a psychological report; and
- (c) such other information or document as may be relevant for the purpose of determining the application.

(4) Upon receipt of an application for a mentoring order, the District Magistrate shall cause a notice of the application to be served on the parents of the child, requiring them to appear before him on such day and time as may be specified in the notice, and in any case not later than 14 days from the date of the application, to show cause why the order applied for should not be made.

(5) (a) The District Magistrate may, for the purpose of determining an application for a mentoring order, summon and—

- (i) examine any parent of the child;
- (ii) examine the child mentor identified in order to ascertain his suitability as a child mentor in the particular case;
- (iii) examine such other person as he may consider appropriate and request such

- other information or report as he considers necessary;
- (iv) request such other information or report as he may consider appropriate.

(b) Any person who, in connection with any examination or request under paragraph (a)—

- (i) refuses to furnish any information or document to the District Magistrate;
- (ii) refuses to answer to the best of his knowledge any question put to him by the District Magistrate; or
- (iii) knowingly gives to the District Magistrate false or misleading information or evidence,

shall commit an offence.

(6) (a) In determining an application for a mentoring order, the District Magistrate shall have regard to the following—

- (i) whether it is imperative that the child should be placed under the Scheme;
- (ii) whether there is any alternative means of providing assistance and support to the child;
- (iii) any undertaking given and measures taken by the parents to provide the child with the required assistance and support without him having to be placed under the Scheme, including the financial means of the parents to provide the child with assistance and support with the help of professionals;
- (iv) any hardship that may be caused to the parents of the child as a result of the mentoring order; and
- (v) any other matter which the Court may consider relevant.

(b) The District Magistrate shall—

- (i) before issuing a mentoring order, consult the child;
- (ii) issue a mentoring order only when it is in the best interest of the child to do so.

(7) (a) Where the District Magistrate is satisfied that the child should be placed under the Scheme, he shall issue a mentoring order which shall be in such form as may be prescribed.

(b) Every mentoring order shall—

- (i) specify the name of the child mentor;
- (ii) specify the time and place where the mentoring exercise shall take place;
- (iii) where appropriate, make provision for such other orders and give such directions as it may consider appropriate to the Permanent Secretary, the child mentor and the parents of the child.

(c) The District Magistrate may, for the purposes of paragraph (b) (ii), take the following factors into consideration—

- (i) the nature and gravity of the child's problem;
- (ii) the infrastructural facilities near the child's residence;
- (iii) the availability and preference of the parents; and
- (iv) such other matters as he may consider relevant.

(d) A mentoring order shall remain in force for such period, not exceeding 12 months, as the District Magistrate may specify.

(e) A District Magistrate may extend the mentoring order for such period of time, not exceeding 12 months, as he considers necessary.

(8) (a) The Permanent Secretary or a parent may, at any time during which a mentoring order is in force, apply to the District Magistrate for a variation or discharge of the mentoring order, including the substitution of a child mentor by another child mentor.

(b) The District Magistrate may vary or discharge a mentoring order, or substitute a child mentor by another child mentor, where he is satisfied that it is in the best interest of the child to do so.

(9) (a) Notwithstanding any other enactment, a mentoring order shall, while it is in force, confer on the Permanent Secretary the power to—

- (i) summon any person, with or without the child, to give evidence for the purpose of verifying whether the child is suffering or likely to suffer harm;
- (ii) enter, and where necessary by force and with the assistance of the police, any premises specified in the mentoring order, and search for the child, subject to a warrant being issued by a District Magistrate;
- (iii) cause the child to undergo such medical examination or treatment as may be necessary for his welfare;
- (iv) request police or medical assistance for the exercise of any power under the mentoring order;
- (v) prevent a child mentor from continuing to mentor a child where he has reason to believe that the child mentor is not discharging his duties under this Act or is acting in breach of the Code of Ethics; and
- (vi) carry out investigations into complaints against a child mentor or any activities of a child mentor.

(b) The Commissioner of Police shall provide such assistance as may be necessary to the Permanent Secretary for the effective exercise of his powers under a mentoring order.

(c) The owner, occupier or person in charge of any premises which the Permanent Secretary or any person lawfully assisting him enters under a mentoring order, shall provide the Permanent Secretary or the person lawfully assisting him with all reasonable facilities and assistance for the effective exercise of his powers under the mentoring order.

(10) The parents or any person having an influence, control or authority upon a child subject of a mentoring order shall, where so requested, provide such assistance as is possible to the child mentor to enable him to effectively discharge his duties.

[S. 3D inserted by s. 4 of Act 40 of 2008 w.e.f. 20 December 2008.]

### **3E. Report on compliance**

The District Magistrate may, in relation to any order made by him under section 3D and where he deems appropriate, direct the Permanent Secretary to report to him on the compliance with the said order, at such regular intervals as he thinks fit.

[S. 3E inserted by s. 4 of Act 40 of 2008 w.e.f. 20 December 2008.]

### **3F. Offence by child mentor**

(1) A child mentor who takes advantage of his position as a child mentor under a mentoring order and commits an offence under this Act or allows the commission of an offence under this Act, shall commit an offence and shall, on conviction, be liable to the appropriate sentence as provided for in section 18.

(2) It shall not be a defence in any criminal case or action against a child mentor that he has been appointed as a child mentor under a mentoring order or registered as a child mentor by the Permanent Secretary.

[S. 3F inserted by s. 4 of Act 40 of 2008 w.e.f. 20 December 2008.]

#### **4. Emergency protection order**

(1) Where a District Magistrate is satisfied by information on oath that the Permanent Secretary has reasonable cause to believe that a child is suffering or likely to suffer significant harm, the District Magistrate shall issue an emergency protection order.

(2) An information on oath and an emergency protection order shall be in the form set out in the Second Schedule.

(3) Notwithstanding any other enactment, an emergency protection order shall, while it is in force, confer on the Permanent Secretary authority to—

- (a) summon any person with or without the child to give evidence for the purpose of verifying whether the child is suffering or likely to suffer significant harm;
- (b) enter any premises specified in the order, where necessary by force, and search for the child, provided that the order or a copy thereof shall be produced to the occupier of the premises on request;
- (c) remove or return the child to, or to prevent the child's removal from, any place of safety;
- (d) where necessary for the welfare of the child, cause him to be submitted to medical examination or to urgent treatment;
- (e) request police or medical assistance for the exercise of any power under the order.

(4) The owner, occupier or person in charge of any premises which the Permanent Secretary or any person lawfully assisting him enters under an emergency protection order shall provide the Permanent Secretary or the person lawfully assisting him with all reasonable facilities and assistance for the effective exercise of his powers under the order.

[S. 4 amended by s. 5 of Act 40 of 2008 w.e.f. 20 December 2008.]

#### **5. Duration of order**

(1) An emergency protection order shall have effect for a period of 14 days.

(2) The District Magistrate may extend the order for a further period of 14 days where he considers it necessary for the protection of the child.

[S. 5 amended by Act 15 of 1998.]

#### **6. Discharge of order**

(1) No appeal shall lie against the issue of an emergency protection order.

(2) (a) Any parent, not earlier than 72 hours after the issue of the order, may apply to the Court for the discharge of the order.

(b) The Court may discharge the order where it is satisfied that it is in the interests of the child to do so.

#### **7. Follow-up action**

Where an emergency protection order has been made in respect of a child, the Permanent Secretary may at any time within a period of 12 months after the order has lapsed—

- (a) summon any person and the child;
- (b) enter the premises where the child is living,

for the purpose of ascertaining whether the child is suffering or likely to suffer significant harm.



## **8. Committal to place of safety**

(1) Where the Permanent Secretary has reasonable ground to believe that a child is ill-treated, neglected, abandoned, destitute or otherwise exposed to harm, and that it is in his interests to be committed to a place of safety, he may apply in writing to the Court for a committal order.

(2) Upon an application under subsection (1), the Court—

- (a) may make an interim order for the child to be put in a place of safety for a period not exceeding 14 days and may extend such interim order for further periods of 14 days until the final determination of the application;
- (b) shall order an urgent enquiry and report by the Probation Service as to the child's family background, general conduct, home surroundings and school record as may enable it to deal with the case in the best interests of the child;
- (c) may request that the child be medically examined.

(3) Where after hearing evidence including that of any parent, wherever possible and practicable, the Court considers it necessary in the interests of the child, it shall order that the child be committed to a place of safety until the child reaches the age of 18 or for such shorter period as the Court may deem fit.

(4) An order made under subsection (3) may be varied in the interests of the child at the instance of any interested party.

(5) Any expenses incurred for the care and protection of a child who has been committed under subsection (3) may be recovered from any parent of the child.

[S. 8 amended by Act 15 of 1998.]

## **9. Removal from place of safety**

Where a child is placed in a place of safety, any person who knowingly and without lawful authority or reasonable excuse—

- (a) takes or keeps the child away;
- (b) does any act for the purpose of enabling the child to stay or run away,

shall commit an offence.

## **10. Appeal**

(1) Notwithstanding any other enactment, the Permanent Secretary or any parent of the child or a guardian *ad hoc* appointed for the purpose may appeal to a Judge in Chambers against any order made under section 8 (3) or any variation made under section 8 (4).

(2) Notwithstanding any other enactment, the Court may, upon the application in writing of any interested party, appoint a guardian *ad hoc* to appeal on behalf of the child.

(3) Subject to subsection (4), an appeal under subsection (1) shall be lodged within a period of 21 days of the making of the order.

(4) Where a guardian *ad hoc* has been appointed to appeal on behalf of the child, the Judge in Chambers may entertain an appeal lodged outside the time limit specified in subsection (3).

[S. 10 amended by Act 15 of 1998.]

## **11. Duty to report**

Notwithstanding any other enactment, where a person exercising any medical or paramedical profession or a member of the staff of a school has reason to suspect that a child he is examining or who is frequenting the school, as the case may be, has been ill-

treated, neglected, abandoned or otherwise exposed to harm, he shall immediately notify the Permanent Secretary.

[S. 11 amended by Act 15 of 1998.]

## **12. Recording of statement**

Notwithstanding any other enactment or rule of law, where the Permanent Secretary has reasonable ground to believe that the interests of a child so require, a statement may, in the presence of the Permanent Secretary, be recorded from him in the absence or without the consent of his parent.

## **13. Ill-treatment**

(1) Any person who ill-treats a child or otherwise exposes a child to harm shall commit an offence.

(2) For the purposes of this section, any person who, in an advertisement, exploits a child by using him in such a way as is likely to cause in him or in any child watching him reactions which are contrary to morality or detrimental to psychological development shall be deemed to expose a child to harm.

[S. 13 amended by Act 15 of 1998.]

## **13A. Child trafficking**

(1) Any person who wilfully and unlawfully recruits, transports, transfers, harbours or receives a child for the purpose of exploitation shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 30 years.

(2) Any person who wilfully and unlawfully recruits, transports, transfers, harbours or receives a child—

- (a) outside Mauritius for the purpose of exploitation in Mauritius;
- (b) in Mauritius for the purpose of exploitation outside Mauritius,

shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 30 years.

(3) Any person who, in any place outside Mauritius, does an act preparatory to, or in furtherance of, the commission of an offence under subsection (1), shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 30 years.

(4) (a) 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 in return for any valuable consideration shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 30 years.

(b) Any person who, without lawful authority or reasonable excuse, harbours or has in his possession, custody or control of any child in respect of whom the temporary or permanent possession, custody or control has been transferred or conferred for valuable consideration by any other person in or outside Mauritius, shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 30 years.

(5) (a) No press report of any Court proceedings relating to an offence under this section shall include any particulars calculated to lead to the identification of any child who is the victim of that offence, nor shall any photograph or picture be published in any newspaper or broadcast as being or including a photograph or picture of that child.

(b) Any person who contravenes paragraph (a) shall commit an offence and shall, on conviction, be liable in respect of each offence to a fine not exceeding 200,000 rupees and to imprisonment for a term not exceeding 2 years.

(6) Part X of the Criminal Procedure Act and the Probation of Offenders Act shall not apply to a person liable to be sentenced under this section.

(7) Where the Court finds that a person who has parental responsibility and rights in respect of a minor has committed an offence under this section in relation to that minor, it may—

- (a) suspend the parental responsibilities and rights of that person; and
- (b) order the minor to be admitted to a place of safety for such period as it things fit.

(8) In this section, “exploitation” has the same meaning as in the Combating of Trafficking in Persons Act.

[S. 13A inserted by s. 3 of Act 34 of 2005; amended by s. 8 of Act 36 of 2008 w.e.f.6 December 2008; s. 21 of Act 2 of 2009.]

### **13B. Abandonment of child**

(1) Any person who, for pecuniary gain or by gifts, promises, threats or abuse of authority, incites a parent to abandon a child or a child to be born shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 20 years.

(2) Any person who, for pecuniary or other gain, acts as an intermediary between a person wishing to adopt a child and a parent willing to abandon a child or a child to be born, shall commit an offence and shall, on conviction, be liable to a fine not exceeding 700,000 rupees and to penal servitude for a term not exceeding 30 years.

(3) Any person who exposes and abandons in a secluded spot any child, and any person who orders the child to be exposed, where such order has been executed, shall, for such act alone, be liable, on conviction, to a fine not exceeding 500,000 rupees and to imprisonment for a term not exceeding 10 years.

(4) Where, in consequence of the exposure and abandonment specified in subsection (3), the child becomes mutilated or lame, the offence shall be deemed to be a wound wilfully inflicted on such child by the person who has so exposed and abandoned the child, and where death has ensued, the offence shall be deemed to be manslaughter, and in the former case, the offender shall suffer the punishment ordained for a wilful wound, and in the latter case, that for manslaughter.

(5) Any person who exposes and abandons a child in a spot that is not secluded, shall, on conviction, be liable to a fine not exceeding 200,000 rupees and to imprisonment for a term not exceeding 5 years.

(6) Part X of the Criminal Procedure Act and the Probation of Offenders Act shall not apply to a person liable to be sentenced under this section.

[S. 13B inserted by s. 3 of Act 34 of 2005 w.e.f. 17 December 2005; amended by s. 8 of Act 36 of 2008 w.e.f. 6 December 2008.]

### **13C. Abducting child**

(1) Any person who, by force or fraud, without the consent of the legal custodian—

- (a) takes away or causes to be taken away a child; or
- (b) leads away, decoys, entices or causes to be led away, decoyed or enticed, a child out of the keeping of the custodian or from any place where the child has been placed or is with the consent of the custodian,

shall commit the offence of abduction, and shall, on conviction, be liable to penal servitude for a term not exceeding 25 years.

(2) Any person who unduly fails to present a child to the person who has the right to claim the child shall commit an offence and shall, on conviction, be liable to a fine not

exceeding 200,000 rupees and to imprisonment for a term not exceeding 5 years.

(3) In the case specified in subsection (1), where the abduction is committed without fraud or violence, the offender shall be liable to penal servitude for a term not exceeding 20 years.

(4) Where an offender who has committed an offence under subsection (1) has civilly married the child whom he has so taken away, he shall not be prosecuted, except upon the complaint of the parties who have the right, under the Code Civil Mauricien, of suing for the nullity of such marriage, and he shall not be convicted until after the nullity of the marriage has been pronounced.

(5) Part X of the Criminal Procedure Act and the Probation of Offenders Act shall not apply to a person liable to be sentenced under this section.

[S. 13C inserted by s. 3 of Act 34 of 2005 w.e.f. 17 December 2005; amended by s. 8 of Act 36 of 2008 w.e.f. 6 December 2008.]

#### **14. Sexual offences**

(1) Any person who causes, incites or allows any child to—

- (a) be sexually abused by him or by another person;
- (b) have access to a brothel;
- (c) engage in prostitution,

shall commit an offence.

(2) For the purposes of subsection (1) (a), a child shall be deemed to be sexually abused where he has taken part whether as a willing or unwilling participant or observer in any act which is sexual in nature for the purposes of—

- (a) another person's gratification;
- (b) any activity of pornographic, obscene or indecent nature;
- (c) any other kind of exploitation by any person.

#### **15. Indecent photographs of children**

(1) Any person who—

- (a) takes or permits to be taken or to make, any indecent photograph or pseudo-photograph of a child;
- (b) distributes or shows such indecent photograph or pseudo-photograph;
- (c) has in his possession such indecent photograph or pseudo-photograph, with a view to it being distributed or shown by himself or any other person; or
- (d) publishes or causes to be published any advertisement likely to be understood as conveying that the advertiser distributes or shows such indecent photograph or pseudo-photograph, or intends to do so,

shall commit an offence.

(2) Where a person is charged with an offence under subsection (1) (b) or (c), it shall be a defence for him to prove that—

- (a) he had reasonable grounds for distributing or showing the photograph or pseudo-photograph or having them in his possession; and
- (b) that he had not himself seen the photograph or pseudo-photograph and did not know, nor had any cause to suspect, it to be indecent.

(3) Where—

- (a) the impression conveyed by the pseudo-photograph is that the person shown

is a child; or

- (b) the predominant impression conveyed is that the person shown is a child, notwithstanding that some of the physical characteristics shown are those of an adult,

the pseudo-photograph shall be treated for all purposes of this Act as showing a child.

[S. 15 inserted by s. 22 (1) (b) of Act 22 of 2003 w.e.f. 9 August 2003.]

## **16. Licensed premises**

(1) (a) No person shall sell any liquor, rum or compounded spirits to a child.

(b) Any person who causes or allows a child to have access to premises in respect of which a licence has been issued for the sale of liquor, rum or compounded spirits for consumption on the premises other than premises in respect of which—

- (i) a restaurant (liquor, rum and compounded spirits) retailer licence; or
- (ii) a hotel or boarding house keeper (liquor, rum and compounded spirits) retailer licence,

has been issued, shall commit an offence.

(c) In this section, “liquor”, “rum” and “compounded spirits” have the same meaning as in the Excise Act.

(2) Any person who causes or allows a child to have access to a gaming house shall commit an offence.

(3) Any person, other than an agent of an educational or cultural institution or organisation, who, in respect of a child under the age of 16—

- (a) allows the child who is unaccompanied by an adult to have access to a video club;
- (b) rents out a video tape to the child,

shall commit an offence.

(4) The licensee of—

- (a) any premises where an offence under subsection (1) is committed;
- (b) any gaming house where an offence under subsection (2) is committed;
- (c) any video club where an offence under subsection (3) is committed,

shall commit an offence unless he proves that the offence was committed without his knowledge or consent and that he took all necessary steps to prevent the commission of the offence.

[S. 16 amended by Act 15 of 1998.]

## **17. Mendicity**

Any person who causes or allows any child under his care to beg shall commit an offence.

## **18. Offences and penalties**

(1) Any person who molests, hinders or obstructs the Permanent Secretary or any person assisting him in the exercise of his powers under this Act shall commit an offence.

(2) Any person who without reasonable cause fails to comply with a summons issued under this Act or wilfully refuses to give evidence or gives material evidence that is false or grossly misleading shall commit an offence.

(3) Any person who contravenes this Act or any regulations made under this Act shall commit an offence.

(4) Any person who commits an offence under section 9, 13 or 16 shall, on conviction, be liable to a fine not exceeding 25,000 rupees and to imprisonment for a term not exceeding 5 years.

(5) Any person who commits an offence under section 14 or 15 shall, on conviction, be liable—

- (a) where the victim is mentally handicapped, to penal servitude for a term not exceeding 30 years;
- (b) in any other case, to a fine not exceeding 100,000 rupees and to penal servitude for a term not exceeding 20 years.

(5A) Part X of the Criminal Procedure Act and the Probation of Offenders Act shall not apply to a person liable to be sentenced under subsection (5).

(6) Any person who commits an offence under this Act for which no specific penalty is provided shall, on conviction, be liable to a fine not exceeding 25,000 rupees and to imprisonment for a term not exceeding 2 years.

(7) The Court before which a person is convicted of an offence under section 15 may, in addition to any penalty imposed, order—

- (a) the forfeiture of any apparatus, article or thing which is the subject matter of the offence or is used in connection with the commission of the offence;
- (b) that the material subject matter of the offence be no longer stored on and made available through the computer system, or that the material be deleted.

[S. 18 amended by s. 22 (1) (c) of Act 22 of 2003 w.e.f. 9 August 2003; s. 4 of Act 34 of 2005; s. 8 of Act 36 of 2008 w.e.f. 6 December 2008.]

## **19. Jurisdiction**

Notwithstanding section 114 of the Courts Act and section 72 of the District and Intermediate (Criminal Jurisdiction) Act, a Magistrate shall have jurisdiction to try an offence under this Act and may impose any penalty provided in this Act.

### **19A. Extradition**

An offence under section 15 of this Act shall be considered to be an extraditable crime for which extradition may be granted or obtained under the Extradition Act.

[S. 19A inserted by s. 22 (1) (d) of Act 22 of 2003 w.e.f. 9 August 2003.]

## **20. Protection from liability**

(1) The Permanent Secretary or any person lawfully assisting him shall not be liable to civil or criminal proceedings in respect of anything done in good faith in the exercise of his powers under this Act.

(2) The Permanent Secretary, Ministry or State of Mauritius shall not be liable for any act done or omission by a child mentor in breach of the provisions of this Act, any other enactment or the Code of Ethics.

(3) Notwithstanding any other enactment, a child mentor shall not be considered as a public officer, an employee or an agent of the State of Mauritius.

[S. 20 amended by s. 6 of Act 40 of 2008 w.e.f. 20 December 2008.]

## **21. Regulations**

(1) The Minister may make such regulations as he thinks fit for the purposes of this Act.

(2) Regulations made under subsection (1) may provide for the registration and control of foster homes, convents, charitable institutions, institutions for children and

such other institutions for the welfare and protection of children as the Minister may deem fit, including institutions providing for the physical, psychological and social recovery of victims of harm or trafficking.

(3) The Minister may, by regulations, amend the Schedule.

[S. 21 amended by Act 15 of 1998; s. 5 of Act 34 of 2005.]

(4) The Minister may make such regulations as he thinks fit for the proper implementation of the Scheme.

[S. 21 amended by Act 15 of 1998; s. 5 of Act 34 of 2005; s. 7 of Act 40 of 2008 w.e.f. 20 December 2008.]

22. – 23. —

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### First Schedule

[Section 2]

#### CODE OF ETHICS

A child mentor who has been assigned a child pursuant to a mentoring order shall—

- (a) be a caring and responsible adult in the life of the child and shall ensure the safety of the child in relation to any outdoor activity which may be proposed under paragraph (h);
- (b) build a trusting relationship with the child in order to identify the reasons for the child's problems, help the child develop an understanding of them and guide the child as to how to tackle those problems;
- (c) work towards improving the child's self-esteem and self-confidence;
- (d) encourage the child to develop his skills and to participate in community-based after-school programmes and activities;
- (e) work towards improving the child's peer and parental relationships;
- (f) provide all necessary guidance, advice and support to the child, with a view to bringing improvement in the child's behaviour and development;
- (g) comply with any recommendations or instructions which the Permanent Secretary may give to him, for the welfare of the child;
- (h) submit at least 5 days in advance to the Permanent Secretary, the list of activities for the month, which he proposes to undertake for the purposes of the mentoring, and such further information as the Permanent Secretary may require in relation to the mentoring;
- (i) regularly liaise with the parents of the child in relation to the progress and evolution of the child;
- (j) at all material times, take into account the opinion of the child and act in his best interest.

[First Sch. inserted by s. 8 (a) of Act 40 of 2008 w.e.f. 20 December 2008.]

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### Second Schedule

#### CHILD PROTECTION ACT

[Section 4]

#### FORM A

#### INFORMATION ON OATH

In the district of .....

Mr/Mrs .....

(Permanent Secretary of the Ministry of Women's Rights, Child Development and Family

Welfare or any public officer designated by him/her)

MAKES OATH and says that—

WHEREAS I have reasonable cause to believe that the child/children .....

.....  
(name or description to be as precise as possible)

believed to be found at .....  
(address to be as clear as possible)

is/are suffering or is/are likely to suffer significant harm inasmuch as I have information that .....  
.....  
.....

I THEREFORE apply for an EMERGENCY PROTECTION ORDER under section 4 of the Child Protection Act.

Sworn before me .....  
District Magistrate

This ..... 20.....

**CHILD PROTECTION ACT**

[Section 4]

**FORM B**

**EMERGENCY PROTECTION ORDER**

In the district of .....

To Mr/Mrs .....

(Permanent Secretary of the Ministry responsible for the subject of child development or a public officer designated by him/her)

WHEREAS I am satisfied by information made ON OATH that—

Mr/Mrs .....

has reasonable cause to believe that the child/children .....

.....  
(name or description to be as precise as possible)

is/are suffering from or is/are likely to suffer significant harm and it is URGENT that this order be issued, I THEREFORE confer upon you .....

..... AUTHORITY—

- (a) to summon any person with or without the child to give evidence for the purpose of verifying whether the child is suffering or likely to suffer significant harm;
- (b) to enter the abovementioned premises, if necessary by force, and search for the child, provided that the order or copy thereof shall be produced to the occupier of the premises upon request;
- (c) to remove or return the child to a place of safety or to prevent the child's removal from any place of safety;
- (d) where necessary for the welfare of the child, to cause him to be submitted to medical examination or to urgent treatment;
- (e) to request police or medical assistance for the exercise of any power under the order.

This order is VALID during 8 days and shall expire on ..... 20 .....

Given under my hand at ..... in the district of .....

Issued on ..... 20 ..... at ..... hours.

This order is extended for a further period of 8 days and shall expire on ..... 20.....

.....  
District Magistrate



Date .....

[Second Sch., previously Sch., renumbered by s. 8 (b) of Act No. 40 of 2008 w.e.f.  
20 December 2008.]

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