

CAYMAN ISLANDS



YOUTH JUSTICE ACT

(2021 Revision)

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Note: (not forming part of this Act): This revision replaces the 2019 Revision which should now be discarded.



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CAYMAN ISLANDS



YOUTH JUSTICE ACT

(2021 Revision)

PART I - Introductory

Short title

1. This Act may be cited as the *Youth Justice Act (2021 Revision)*.

Definitions

2. In this Act —

“**community service order**” has the same meaning as in the *Penal Code (2019 Revision)*;

“**court of summary jurisdiction**” includes a youth court;

“**detention facility**” has the meaning assigned to it under section 14(4);

“**indictable offence**” means an offence which is triable on indictment, whether it is exclusively so triable or triable either way;

“**justice of the peace**” has the same meaning as in the *Summary Jurisdiction Act (2019 Revision)*;

“**magistrate**” has the same meaning as in the *Summary Jurisdiction Act (2019 Revision)*;

“**offence**” has the same meaning as in the *Penal Code (2019 Revision)*;

“**offence triable either way**” means an offence which is triable either on indictment or summarily, and the terms “**indictable**”, “**summary**” and “**triable either way**”, in their application to offences, are to be construed accordingly;

“**parental responsibility**” has the same meaning as in the *Children Act (2012 Revision)*;

“**probation order**” has the same meaning as in the *Alternative Sentencing Act (2008 Revision)*;

“**summary offence**” means an offence which is triable only summarily;

“**young person**” means, subject to the provisions relating to youth rehabilitation orders, a person under the age of seventeen; and

“**youth court**” means a court of summary jurisdiction constituted under section 3.

PART II - Youth Courts and Proceedings with Respect to Young Persons

Constitution and jurisdiction of youth courts

Constitution of youth courts

3. (1) Courts of summary jurisdiction —
- (a) constituted in accordance with subsection (2); and
 - (b) sitting for the purposes of exercising any jurisdiction conferred on youth courts by or under this Act,
- shall be known as youth courts.
- (2) Youth courts shall be presided over by —
- (a) a magistrate sitting alone;
 - (b) a magistrate sitting with two justices of the peace, at least one of the justices being of the opposite sex to the magistrate; or
 - (c) three justices of the peace, at least one of whom is a woman.

General jurisdiction of youth courts

4. (1) Youth courts shall have jurisdiction to try all summary offences committed by young persons in the Islands.
- (2) A youth court shall, in addition to the powers conferred by this Act, have the same powers in relation to the exercise of its jurisdiction as a court of summary jurisdiction which is not a youth court.
- (3) Where a young person is charged with a summary offence —



- (a) on that person's own; or
 - (b) jointly with another young person,
- the Clerk of the court shall arrange for the charges to be heard by a youth court.
- (4) On hearing —
- (a) a charge against a young person; or
 - (b) any application in criminal proceedings with respect to a young person,
- a youth court may proceed to hear the charge or application notwithstanding that it is discovered after the commencement of the hearing that that person is not a young person.
- (5) Where —
- (a) any offence is committed by a person before that person attains the age of seventeen; and
 - (b) that person is not tried for that offence until after that person has attained that age,
- that person may be tried before any court.

Assignment of charges to courts

Assignment of summary charges to courts

5. (1) Subject to subsections (2) to (5), no charge against a young person with respect to a summary offence shall be heard by a court of summary jurisdiction which is not a youth court.
- (2) A charge with respect to a summary offence made jointly against a young person and a person who has attained the age of seventeen years shall be heard by a court of summary jurisdiction other than a youth court.
- (3) Where a young person is charged with a summary offence, the charge may be heard by a court of summary jurisdiction which is not a youth court if a person who has attained the age of seventeen years is charged at the same time with aiding, abetting, causing, procuring, allowing or permitting that offence.
- (4) Where, in the course of any proceedings before any court of summary jurisdiction other than a youth court, it appears that the person to whom the proceedings relate is a young person, nothing in subsection (1) shall be construed as preventing the court, if it thinks fit to do so, from proceeding with the hearing and determination of those proceedings.
- (5) The provisions of this section are subject to the power of a judge of the Grand Court conferred by section 7.

Trial of indictable offences and offences triable either way

6. (1) Where a young person is charged on that person's own with an indictable offence triable only on indictment, that person shall be committed by a youth court for trial before the Grand Court.
- (2) Where a young person is charged on that person's own with an offence triable either way, the mode of trial for that offence shall be determined by a youth court in accordance with the provisions of the *Criminal Procedure Code (2021 Revision)* applicable to the offence.
- (3) Where a young person is charged jointly with another young person with an offence triable either way, the mode of trial for that offence shall be determined by a youth court in accordance with the provisions of the *Criminal Procedure Code (2021 Revision)* applicable to the offence.
- (4) Where a young person is charged with an offence triable either way, jointly with another person who has attained the age of seventeen, the mode of trial for that offence shall be determined by a court of summary jurisdiction other than a youth court.
- (5) The provisions of this section are subject to the power of a judge of the Grand Court conferred by section 7.

Power to order joint trial of young person with an adult

7. (1) This section applies where a young person and a person who has attained the age of seventeen are jointly charged with any criminal offence.
- (2) Where this section applies, and notwithstanding the provisions of any other law, a judge of the Grand Court may order a joint trial on such terms and conditions as that judge may decide to impose having regard both to the welfare of the young person and the necessity of doing justice in the case.
- (3) An application for an order under subsection (2) may be made to a judge in chambers before a mode of trial has been determined for any of the joint charges with respect to which the application is made.
- (4) In subsection (2) —
“**trial**” includes committal proceedings.

Powers of courts relating to young persons

Determination of age of young persons

8. (1) Where —
- (a) a person (whether or not charged with an offence) is brought before any court in any criminal proceedings otherwise than for the purpose of giving evidence; and



- (b) it appears to the court that that person is a young person, the court shall make due enquiry as to that person's age.
- (2) Where —
 - (a) an enquiry under subsection (1) has been made; and
 - (b) as a result of the enquiry it appears to the court that the person has not attained the age of seventeen,
 that person shall be deemed to be a young person for the purpose of the proceedings.
- (3) The age of a young person determined as a result of the enquiry shall be deemed, for the proceedings concerned, to be the true age of that person.
- (4) Any order made by a court shall not be invalidated by subsequent proof that the age of a person under this section was not correctly determined.

Power to hear case in absence of young person

- 9. (1) Where, in any proceedings to which this section applies, the court is satisfied that the attendance before it of any young person (in respect of whom the offence is alleged to have been committed) is not essential to the just hearing of the case, the court may proceed to hear and determine the proceedings in the absence of the young person.
- (2) Subsection (1) applies to proceedings —
 - (a) before a youth court; and
 - (b) with respect to a young person, before any other court.

Protection of welfare of young persons in criminal courts

Sitting of youth courts, etc.

- 10. (1) Youth courts shall sit as often as may be necessary for the purpose of exercising any jurisdiction conferred on them by or under this or any other law.
- (2) No person shall be present at any sitting of a youth court or other court hearing a charge against a young person except —
 - (a) members or officers of the court;
 - (b) parties to the case before the court, their attorneys-at-law and witnesses giving or having given their evidence;
 - (c) other persons directly concerned with the case, including —
 - (i) parents, guardians or persons having parental responsibility for the young person concerned;
 - (ii) social workers, teachers, Education Department officers and probation officers; and

- (d) such other persons as the court may authorise to be present.

Separation of young persons from adults in police stations, etc.

- 11.** (1) In the circumstances mentioned in subsection (2), the Commissioner of Police shall, wherever practicable, make arrangements —
- (a) for preventing a young person from associating with an adult who is not a relative or other person having parental responsibility for that person and is charged with any offence other than an offence with which the young person is jointly charged; and
 - (b) for ensuring that a young person who is a girl shall be under the care of a woman.
- (2) The circumstances are where a young person is —
- (a) detained in a police station; or
 - (b) conveyed to or from any criminal court.

Reporting restrictions

- 12.** (1) In relation to any proceedings in any court, such court may direct that —
- (a) no published report of or comment on the proceedings shall reveal the name, address or school, or include any particulars calculated to lead to the identification, of any young person concerned in the proceedings, either as being the person by, against or in respect of whom the proceedings are taken, or as being a witness in the proceedings; and
 - (b) no picture shall be published as being or including a picture of any young person so concerned in the proceedings.
- (2) Whoever publishes any matter in contravention of subsection (1) is guilty of an offence and liable on summary conviction, in respect of each such offence, to a fine of five thousand dollars or to imprisonment for six months.

Proceedings with respect to young persons

Duty of parent, etc., to attend court

- 13.** (1) Where a young person is charged with an offence, or is for any other reason brought before any court, the court shall require a person who is a —
- (a) parent of the young person; or
 - (b) guardian or other person who has parental responsibility for that person ,
- to attend at the court during all the stages of the proceedings, unless and to the extent that the court is satisfied that it would be unreasonable to require such attendance having regard to the circumstances of the case.
- (2) For the purposes —



- (a) of enforcing the attendance of the parent, guardian or other person with parental responsibility;
 - (b) enabling that person to take part in the proceedings; and
 - (c) enabling the court to make orders against that person ,
- the court may issue and serve a summons on the parent, guardian or other person with parental responsibility requiring that person's attendance before the court.
- (3) Where —
- (a) a court has issued a summons under subsection (2) which has been (or is due to be) served on the parent, guardian or other person with parental responsibility for a young person charged with an offence; and
 - (b) the court is satisfied that the parent, guardian or other person will not, without an order, cooperate with the Department of Social Services in carrying out its functions under this Act with respect to the young person,
- the court may make an order requiring that parent, guardian or other person to take such action specified in the order as the court determines is reasonable for the purpose of ensuring that cooperation.
- (4) Where a court —
- (a) has issued and served a summons under subsection (2) requiring the attendance at a court of a parent or guardian of a young person, or other person with parental responsibility for that person , and that parent, guardian or other person has, without reasonable excuse, failed to attend at the court in compliance with the summons; or
 - (b) has made an order under subsection (3) requiring action specified in the order to be taken, and the court is satisfied that the person required to take that action has, without reasonable excuse, failed to do so,
- the court may issue a warrant for the arrest of that parent, guardian or other person requiring that person to be brought before the court.
- (5) Where a court, before which a parent, guardian or other person is brought under subsection (4), is satisfied that the parent, guardian or other person has, without reasonable excuse, failed —
- (a) to attend as mentioned in subsection (3); or
 - (b) to take action as mentioned in subsection (4),
- the court may, without prejudice to any other order or proceedings, impose on that parent, guardian or other person a fine of one thousand dollars.
- (6) A person may appeal —
- (a) against an order under subsection (5) made by a youth court, or any other court of summary jurisdiction, to the Grand Court; and

- (b) against an order under that subsection made by the Grand Court to the Court of Appeal under Part III of the *Court of Appeal Act (2011 Revision)*.

Bail or detention of young person

- 14.** (1) Where a young person has been taken into custody (whether or not with a warrant) and cannot be brought without delay before a court, the police officer in charge of the police station to which that person is brought —
- (a) shall enquire into the case; and
 - (b) may release that person on bail under section 65 of the *Police Act (2021 Revision)*.
- (2) Where the young person is not released on bail, the police officer in charge of the police station shall, immediately and no later than three hours after the decision not to release the young person on bail —
- (a) inform the Department of Social Services and, where the young person is of compulsory school age (within the meaning of the *Education Act, 2016 [Law 48 of 2016]*), the Chief Education Officer of the detention of the young person;
 - (b) take such steps as are practicable to ascertain the identity of a person responsible for the welfare of the young person; and
 - (c) detain the young person in a detention facility for a period not exceeding forty-eight hours until that person can be brought before a court.
- (3) If it is practicable to ascertain the identity of a person responsible for the welfare of the young person, the police officer in charge of the police station shall inform that person —
- (a) that the young person has been detained;
 - (b) why that person has been detained; and
 - (c) where that person has been detained, unless it is not practicable to do so.
- (4) In subsection (2), section 15 and the First Schedule —
- “detention facility”** means —
- (a) any place declared by order of the Cabinet to be a detention facility for the purposes of this Act;
 - (b) any police station lock-up; or
 - (c) Northward Prison, Grand Cayman.

Remand

- 15.** (1) Where a court remands a young person in custody, it shall commit that person to custody of a detention facility to be detained there for the period of the remand.



- (2) Where a young person has been committed to be detained in a detention facility under this section, the court may commit that person to another detention facility if satisfied, on application by a police officer or social worker, that the detention facility in which that person is being detained is not appropriate.
- (3) In considering whether a particular detention facility is appropriate the court shall have regard to all the circumstances, including —
 - (a) the welfare of the young person;
 - (b) the need to ensure the young person —
 - (i) does not fail to attend at the court when required to do so;
 - (ii) does not interfere with witnesses or otherwise obstruct the course of justice, whether in relation to themselves or another person;
 - (iii) makes themselves available to enable any report to be prepared under section 19; and
 - (iv) does not commit any further offences;
 - (c) the likelihood of the young person absconding from the detention facility;
 - (d) whether the young person has breached any conditions of a rehabilitation order or probation order; and
 - (e) the nature of any offence with which the young person is charged.

Notice to social services and information to court

- 16.** (1) Where a young person is to be brought before any court, the person responsible for bringing that person before the court shall give notice to the Department of Social Services —
- (a) of the grounds on which the young person is to be brought before the court; and
 - (b) of the date on which that person will be so brought, as soon as is practicable and, whenever possible, at least fifteen days before that date.
- (2) On receiving the notice, it shall be the duty of the Department to make such investigations, to inform such other Departments, and make available to the court such information about —
- (a) the background;
 - (b) school record; and
 - (c) age, health and character, of the young person as the Department consider will be helpful to the court.
- (3) In any proceedings with respect to a young person, a court may receive information relating to the young person from any person whom it considers can help in the determination of the proceedings, and the court may adjourn the proceedings in order to be provided with that information.

Evidence of young persons

17. (1) This section applies where, in proceedings against any person for an offence, a young person is called as a witness who does not, in the opinion of the court, understand the nature of an oath.
- (2) In proceedings to which this section applies the evidence of a young person who does not understand the nature of an oath may be given if —
- (a) in the opinion of the court, that person is possessed of sufficient intelligence to justify the reception of the evidence; and
- (b) he understands the duty of speaking the truth.
- (3) The evidence of a young person given under subsection (2), though not given on oath but otherwise reduced into writing, shall be deemed to be a deposition for the purposes of this and any other law.
- (4) **Repealed** by section 2 of the *Youth Justice (Amendment) Act, 2020 [Law 32 of 2020]*.
- (5) Where a young person wilfully gives false evidence under subsection (2) in such circumstances that that person would, if this evidence had been given on oath, have been guilty of perjury, that person is guilty of an offence and liable on conviction on indictment to the same punishment as if that person had committed perjury.

Duties of court

18. (1) When a young person is brought before a court, it shall explain to that person , in as simple language as possible, the reason for that person being before the court and where the young person’s ability to understand that reason is impaired through any disability, the court shall ensure such reasonable assistance is given to the young person as it thinks will help the young person to understand the explanation.
- (2) Where a young person who is not legally represented is charged before a court, it shall ascertain that person’s defence, if any, to assist that person and that person’s parent, guardian or other person having parental responsibility for that person in putting such questions to any witness as appear to the court to be necessary.

Pre-sentencing reports

19. (1) This section applies where —
- (a) a young person admits an offence with which that person has been charged; or
- (b) the court is satisfied that the offence has been proved, and a finding to that effect is recorded.



- (2) Before sentencing the young person, the court shall obtain such information as it considers it requires as to the young person's —
 - (a) circumstances, including any previous offences;
 - (b) background; and
 - (c) school and medical records,as may enable it to sentence the young person appropriately.
- (3) For the purpose of obtaining any such information the court may, from time to time, remand the young person on bail or in custody.

PART III - Young Persons and Offences

Punishment of offences

Punishment of offences

- 20.** (1) Where a young person is found guilty of any offence before a youth court, the court may —
- (a) either make any one or more of the orders specified in subsection (2); or
 - (b) make any one or more of the orders specified in subsection (3), and any such order may be made in addition to or in lieu of any order referred to in subsection (4).
- (2) The orders referred to in paragraph (a) of subsection (1) are —
- (a) an order absolutely or conditionally discharging the young person; a condition being that that person commits no further offences within twelve months of the date of the offence for which that person was convicted;
 - (b) an order under the *Mental Health Act (2021 Revision)*;
 - (c) a community service order;
 - (d) a probation order; and
 - (e) an order requiring the young person to attend at such premises as may be specified in the order for such number of hours as, under section 24, may be so specified.
- (3) The orders referred to in paragraph (b) of subsection (1) are —
- (a) an order (a “youth rehabilitation order”) requiring the young person to attend a rehabilitation school; or
 - (b) a custodial sentence imposed in accordance with the First Schedule.

- (4) Where a young person is found guilty of any offence before a youth court, the court may, in addition to or in lieu of making any such order it has power to make under subsection (1), make an order —
- (a) confiscating any property of the young person used in connection with the commission of the offence;
 - (b) requiring the young person to comply with an order made under any other law;
 - (c) requiring that person to pay a fine, compensation or costs; or
 - (d) in respect of an offence involving the use or attempted use of a motor vehicle, disqualifying the young person from obtaining a driving licence for such period, not exceeding seven years, as the court thinks fit.
- (5) Where a young person has been found guilty of an offence before —
- (a) a court of summary jurisdiction other than a youth court; or
 - (b) the Grand Court,
- the court may, in addition to or in lieu of any other sentence it has power to impose on the young person for the offence, make any of the orders which a youth court has power to make under this Act.
- (6) Where a court dealing with any charge against a young person has heard both the prosecution and the accused person and their witnesses, the court may, without recording a conviction, if it is of the opinion that it is not expedient to inflict any punishment notwithstanding that it finds the charge against the accused is proved, make an order discharging the accused absolutely or conditionally.

Orders imposed on parents of young persons

Power to order parent or guardian to pay fine, etc.

- 21.** (1) Where —
- (a) a young person is found guilty of any offence before —
 - (i) a youth court;
 - (ii) any other court of summary jurisdiction; or
 - (iii) the Grand Court; and
 - (b) the court is of opinion that the case would best be met by the imposition of a fine, costs or the making of a compensation order, whether with or without other punishment,
- it is the duty of the court, subject to subsection (2), to order that the fine, compensation or costs awarded be paid by the parent or guardian of, or other



person who has parental responsibility for, the young person instead of by the young person themselves.

- (2) A court shall not be under the duty specified in subsection (1) where the court is satisfied —
 - (a) that the parent, guardian or other person having parental responsibility cannot be found; or
 - (b) that it would be unreasonable to make an order for payment having regard to the circumstances of the case.
- (3) An order under subsection (1) may be made against a parent, guardian or other person having parental responsibility who, having been required to attend, has failed to do so, but, otherwise, no such order shall be made without giving the parent, guardian or other person having parental responsibility an opportunity of being heard.
- (4) A person may appeal against an order under this section made by —
 - (a) a youth court or any other court of summary jurisdiction, to the Grand Court; and
 - (b) the Grand Court, to the Court of Appeal under Part III of the *Court of Appeal Act (2011 Revision)*.
- (5) In relation to a young person for whom the Department of Social Services has parental responsibility and who is —
 - (a) in its care; or
 - (b) provided with accommodation by, or on behalf of, the Department in the exercise of its functions under the *Children Act (2012 Revision)*,

references in this section to that person's parent or guardian shall be construed as references to that Department.

Binding over of parent or guardian, etc.

- 22.** (1) Where a young person is found guilty of any offence before —
- (a) a youth court;
 - (b) any other court of summary jurisdiction; or
 - (c) the Grand Court,

it shall be the duty of the court to exercise the powers conferred by this section if it is satisfied that, having regard to the circumstances of the case, their exercise would be desirable in the interests of preventing the commission by the young person of further offences.

- (2) Where the court is not satisfied as mentioned in subsection (1) it shall state in open court —

- (a) that it is not satisfied that the exercise of the powers conferred on the court by this section would be desirable in the interests of preventing the commission by the young person of further offences; and
 - (b) why it is not so satisfied.
- (3) The powers conferred by this section are —
 - (a) to order the parent, guardian or other person who has parental responsibility for the young person to enter into a recognizance to take proper care of that person and exercise proper control over that person ; and
 - (b) if the parent, guardian or other person having parental responsibility refuses to enter into the recognizance and the court considers the refusal unreasonable, to order that parent, guardian or other person having parental responsibility to pay a fine of five thousand dollars.
- (4) An order under this section shall not require the parent, guardian or other person having parental responsibility to enter into a recognizance for a period exceeding three years or, where the young person will attain the age of seventeen years in a period shorter than three years, for a period exceeding that shorter period.
- (5) In fixing the amount of a recognizance under this section, the court shall take into account among other things the means of the parent guardian or other person having parental responsibility so far as they appear or are known to the court; and this subsection applies whether taking into account the means of the parent, guardian or other person having parental responsibility has the effect of increasing or reducing the amount of the recognizance.
- (6) A person may appeal against an order under this section made by —
 - (a) a youth court or any other court of summary jurisdiction, to the Grand Court; and
 - (b) the Grand Court, to the Court of Appeal of the Islands under Part III of the *Court of Appeal Act (2011 Revision)*.
- (7) The Grand Court may vary or revoke an order made by it under this section if, on the application of the parent, guardian or other person having parental responsibility, it appears to the court, having regard to any change in the circumstances since the order was made, to be in the interests of justice to do so.
- (8) Where —
 - (a) a recognizance has been entered into in pursuance of an order under paragraph (a) of subsection (3) before any court; and
 - (b) the recognizance appears to any court of summary jurisdiction to be forfeited,



the court may, by order made on complaint, declare the recognizance to be forfeited and adjudge the person bound thereby to pay the sum in which that person is bound, or part of that sum.

- (9) Payment of any sum adjudged to be paid under subsection (8) including any costs awarded against the defendant, may be enforced, and any such sum shall be applied, as if it were a fine and as if the adjudication were a summary conviction for an offence.

Probation orders

Probation orders

- 23.** (1) Where a young person has been placed under the supervision of a probation officer by a probation order made under this Act, the probation officer shall, in addition to that probation officer's powers and duties under the *Alternative Sentencing Act (2008 Revision)* —
- (a) visit, advise and befriend the young person; and
 - (b) if it appears necessary in the interests of welfare, bring that person before a youth court to apply for such further order under section 20 of this Act or under the *Alternative Sentencing Act (2008 Revision)* as appears to the probation officer to be appropriate.
- (2) On an application made under paragraph (b) of subsection (1), a youth court may —
- (a) vary or discharge the probation order;
 - (b) make such order under section 20(1), including a further probation order, as it thinks fit; or
 - (c) make such order under the *Alternative Sentencing Act (2008 Revision)* as it thinks fit.
- (3) Any —
- (a) requirement or condition in a probation order; and
 - (b) duty imposed by paragraph (a) of subsection (1) to visit, advise and befriend a young person subject to a probation order, shall not apply after the young person attains the age of seventeen years.

Attendance orders

Attendance orders

- 24.** (1) A court shall make an order under paragraph (e) of section 20(2), an “attendance order”, in accordance with subsections (2) to (5).

- (2) The aggregate number of hours for which an attendance order may require a young person to attend at the premises specified in the order shall not be less than ten and shall not exceed fifty.
- (3) A court may make an attendance order in respect of a young person before a previous attendance order made in respect of that person has ceased to have effect, and may determine the number of hours to be specified in the order without regard —
 - (a) to the number of hours specified in the previous order; or
 - (b) to the fact that the previous order is still in effect.
- (4) An attendance order shall not be made unless the court is satisfied that the premises at which the young person is required to attend are reasonably accessible to that person, having regard to that person's age, the means of access available to that person and any other circumstances.
- (5) The times at which a young person is required to attend premises under an attendance order shall be such as to avoid interference, so far as practicable, with that person's school hours; and the times during which that person's attendance is so required shall be specified in the order.

Discharge and variation of attendance orders

- 25.** (1) An attendance order may be discharged on an application by the young person, a probation officer or social worker, made to a youth court; and on such an application the court may, by order, discharge the attendance order.
- (2) The power to discharge an attendance order includes power to deal with the young person, for the offence in respect of which the order was made, in any manner in which that person could have been dealt with for that offence by the court which made the order if the order had not been made.
 - (3) An attendance order may, on the application of the young person, a probation officer or social worker, be varied by a youth court.
 - (4) The power to vary an attendance order is a power by order —
 - (a) to vary the times specified in the order during which the young person's attendance is required at the premises so specified; or
 - (b) to substitute for those premises other premises which the court is satisfied are reasonably accessible to the young person having regard to that person's age, the means of access available to that person and any other circumstances.



Breach of attendance orders

- 26.** (1) Where an attendance order has been made, and it appears, on information in writing and on oath to a justice of the peace, that the young person has failed to attend in accordance with the order, the justice may issue a summons requiring the young person to appear before a youth court at the place and time specified in the summons.
- (2) Where an information under subsection (1) has been laid, the justice may issue a warrant for the young person's arrest requiring that person to be brought before a youth court.
- (3) Where the youth court (before which the young person appears or is brought under this section) is satisfied that the young person has failed without reasonable excuse to attend as mentioned in subsection (1), that court may, without prejudice to the continuation of the order, impose on that person a fine of one thousand dollars or, if the attendance order was made by —
- (a) a court of summary jurisdiction, revoke it and deal with that person, for the offence in respect of which the order was made, in any manner in which that person could have been dealt with for that offence by the court which made the order if the order had not been made; or
- (b) the Grand Court, commit that person in custody or release that person on bail until that person can be brought or appears before the Grand Court.
- (4) A fine imposed under subsection (3) shall be deemed, for the purposes of any enactment, including this Act, to be a sum adjudged to be paid by a conviction.
- (5) A youth court which deals with a young person's case under paragraph (b) of subsection (3) shall send to the Grand Court a certificate signed by a justice of the peace giving particulars of the young person's failure to attend as required by the attendance order, together with such other particulars of the case as may be described; and a certificate purporting to be so signed shall be admissible as evidence of the failure before the Grand Court.
- (6) Where, by virtue of paragraph (b) of subsection (3), the young person is brought or appears before the Grand Court, and it is proved to the satisfaction of the court that that person has failed to attend as required by the attendance order, the court may revoke the attendance order and deal with that person, for the offence in respect of which the order was made, in any manner in which it could have dealt with that person for that offence if it had not made the order.
- (7) In dealing with a young person under paragraph (a) of subsection (3) or under subsection (6), the court concerned —
- (a) shall take into account the extent to which the young person has complied with the requirements of the attendance order; and
- (b) may assume, in the case of a young person who has wilfully and persistently failed to comply with those requirements, that that person has

refused to give that person's consent to a sentence which has been proposed by the court and required that consent.

- (8) A young person sentenced under paragraph (a) of subsection (3) for an offence may appeal to the Grand Court against the sentence.
- (9) In proceedings before the Grand Court under this section, any question whether there has been a failure to attend as required by an attendance order shall be determined by the court and not by the verdict of a jury.

Youth rehabilitation orders

Youth rehabilitation orders

- 27.** (1) A court shall not make a youth rehabilitation order in respect of any young person unless —
- (a) it has received a report from a social worker which recommends that the young person in respect of whom the report was prepared would benefit from the order being made;
 - (b) it is satisfied that —
 - (i) the young person is beyond parental control; and
 - (ii) it is in the interests of the welfare of the young person that the order is made; and
 - (c) in respect of an order requiring the attendance of a young person at a school which is not in the Islands, the Attorney-General has given a certificate that the laws applicable —
 - (i) to the education, training, residence and detention of young persons at that school; and
 - (ii) travel to and from that school,are such as to allow the order to be carried out.
- (2) In considering whether to make a youth rehabilitation order, a court shall have regard to —
- (a) the welfare of the young person;
 - (b) his educational needs;
 - (c) his age, sex, religious persuasion and background;
 - (d) the nature of the offence; and
 - (e) all the other circumstances which the court considers relevant.
- (3) Where a social worker employed by the Department of Social Services, or a probation officer has reasonable grounds for believing a young person is beyond parental control, that social worker may make an application to a youth court for a youth rehabilitation order.



- (4) For the purposes of an application mentioned in subsection (3) —
 - (a) sections 9, 10, 12, 13, 17 and 18 shall apply as if the young person was being dealt with by the court in proceedings to which those provisions relate; and
 - (b) the court may grant the application in accordance with subsections (1) and (2).
- (5) A youth rehabilitation order —
 - (a) shall require the attendance of the young person with respect to whom the order is made at the rehabilitation school specified in the order; and
 - (b) may require the detention of that young person at that school for such period, not exceeding the duration of the order, as may be so specified.
- (6) After a court has made a youth rehabilitation order which requires the detention of the young person at a rehabilitation school, that person shall (unless the court otherwise orders) be detained at a detention facility to be determined by the court until that person is conveyed to that school.
- (7) The Second Schedule shall have effect for the purpose of making further provision with respect to youth rehabilitation orders and rehabilitation schools.

Cautions and conditional discharges

Cautions

- 28.** (1) Subject to subsection (5), where a young person admits to the police to having behaved in a manner that amounts to an offence that person may be cautioned in accordance with this section instead of being charged and tried for the offence.
- (2) For the purpose of subsection (1), a caution shall take the form of a written statement that is —
 - (a) read to the young person by a uniformed member of the police force of the rank of inspector or above in the presence of a parent, guardian or other person having parental responsibility for that person ; and
 - (b) then signed by the young person, the police officer and the parent, guardian or other person having parental responsibility for the young person.
- (3) The statement shall contain —
 - (a) details of the behaviour to which the young person admits;
 - (b) details of the offence constituted by that behaviour;
 - (c) a warning to the young person not to behave in that manner again;
 - (d) a warning to the young person that if, while still a young person, that person is convicted of any offence the caution will be revealed to the court

- that convicts the young person and may be taken into account by that court when sentencing the young person for the offence; and
- (e) an acknowledgement by the young person —
 - (i) that that person acted in the manner specified in the statement; and
 - (ii) that that person has been made aware of the results of being convicted of any subsequent offence while still a young person.
 - (4) The original statement shall be retained by the police and a copy shall be retained by the young person.
 - (5) If a young person who has received a caution is convicted of an offence, the caution statement signed by the young person shall be produced to the court that convicted the young person and the court may take that person's previous behaviour (as described in the statement) into account when sentencing that person for the offence.
 - (6) For the purposes of this section, “**young person**” means a person under the age of eighteen.

Breach of conditional discharge

- 29.** (1) If it appears to a court, where it has jurisdiction in accordance with subsection (2), that a young person in whose case an order for conditional discharge has been made —
- (a) has been convicted by any court of an offence committed during the period of conditional discharge; and
 - (b) has been dealt with in respect of that offence,
- the court may issue a summons requiring that person to appear at the time and place specified in the summons or issue a warrant for that person's arrest.
- (2) Jurisdiction for the purpose of subsection (1) may be exercised —
- (a) where the order for conditional discharge was made by the Grand Court, by that court;
 - (b) where the order for conditional discharge was made by a court of summary jurisdiction other than a youth court, by any such court; or
 - (c) where the order for conditional discharge was made by a youth court, by any such court.
- (3) If a young person in whose case an order for conditional discharge has been made by the Grand Court is convicted by any court of summary jurisdiction of an offence committed during the period of conditional discharge, the court of summary jurisdiction may commit that person to custody or release that person on bail until that person can be brought to appear before the Grand Court.
- (4) Where it is proved to the satisfaction of the court by which an order for conditional discharge was made that the person in whose case the order was



made has been convicted of an offence committed during the period of conditional discharge, the court may deal with that person, for the offence for which the order was made, in any manner in which it could deal with that person if that person had just been convicted by or before that court of that offence.

- (5) If a person in whose case an order for conditional discharge has been made by any court of summary jurisdiction is convicted before the Grand Court of an offence committed during the period of conditional discharge, the Grand Court may deal with that person, for the offence for which the order was made, in any manner in which the court of summary jurisdiction could deal with that person if that person had just been convicted by or before that court of that offence.

PART IV - Miscellaneous and Supplementary Provisions

Contribution orders

- 30.** (1) Where an order has been made under section 20 requiring a young person to attend a rehabilitation school, it shall be the duty of the following persons to make contributions in respect of that person —
- (a) his parents;
 - (b) his guardian;
 - (c) any person who, at the date when an order is made, is cohabiting with that person's mother, whether or not that person is the father; and
 - (d) any other person having parental responsibility for that person .
- (2) Contributions under subsection (1) shall be payable to the Clerk of the summary court to be applied by that person in or towards the maintenance, or otherwise for the benefit, of the young person.
- (3) Where any person is liable under subsection (1) to make contributions, any court may —
- (a) at the time the order under section 20 was made; or
 - (b) at any later time during the period that the order remains in force,
- make a contribution order with respect to any such person requiring that person to contribute such sum in respect of each young person that person is responsible for as the court, in all the circumstances, thinks fit.
- (4) A contribution order —
- (a) shall remain in force throughout the period that the young person is required to attend the rehabilitation school; and
 - (b) may, during that period, be varied or revoked on the application of —
 - (i) the person liable to make the contributions;
 - (ii) an authorised officer of the rehabilitation school; or

- (iii) the Department of Social Services.
- (5) A contribution order shall be enforceable by the Clerk of the Summary Court as if the contribution order was an order for the payment of periodical payments under the *Children Act (2012 Revision)* and paragraph 9 of Schedule 1 to that Act shall apply to the enforcement of contribution orders as it applies to the enforcement of orders under that Act.

Affiliation Orders

- 31.** (1) Where —
- (a) an order has been made under section 20 requiring a young person to attend a rehabilitation school;
 - (b) he is illegitimate; and
 - (c) an affiliation order made under the *Affiliation Act (1995 Revision)* for that person's maintenance is in force,
- any court may, at any time, order the payments under the affiliation order to be paid to the Clerk of the summary court.
- (2) Sums received by the Clerk of the summary court under the affiliation order shall be applied to the maintenance of the young person as if they were contributions received under a contribution order.
- (3) Section 11 of the *Affiliation Act (1995 Revision)* (changes of address) shall apply to any order under subsection (1) with “one thousand dollars” substituted for “twenty dollars”.

Appeals

- 32.** (1) An appeal shall lie from any decision or order of a youth court to the Grand Court.
- (2) The procedure to be followed for such an appeal shall be the same as for an appeal from any other court of summary jurisdiction.

Procedure, forms and regulations

- 33.** (1) In the period after the 12th March, 1996 and before the making of any rules by the Rules Committee of the Grand Court for giving effect to this Act —
- (a) the procedure to be followed —
 - (i) in any court other than a youth court, shall be the procedure in force immediately before the start of that period; and
 - (ii) in a youth court, shall be the procedure in force in a juvenile court immediately before the start of that period; and



- (b) the forms to be used for the purposes of this Act shall be the forms in use for the purposes of the **repealed** *Juveniles Law, 1990* [*Law 19 of 1990*] immediately before the start of that period. **see note 1 on p. 39.*
- (2) Any order, directions or regulations made by the Cabinet may —
 - (a) make different provision for different cases;
 - (b) provide for exemptions from any of its provisions; and
 - (c) contain such incidental, supplemental and transitional provisions as the Cabinet considers expedient.

Amendments, repeals and transitional provisions

- 34.** (1) The amendments and repeals set out in Part I of the Third Schedule shall have effect.
- (2) The transitional provisions set out in Part II of the Third Schedule shall have effect.

FIRST SCHEDULE

(section 20(3))

Custody and Detention of Young Offenders

General restrictions on custodial sentences

1. (1) The only custodial sentences that a court may make where a young person is found guilty of an offence are the sentences mentioned in this Schedule.
- (2) A court shall not pass a custodial sentence under this Schedule on a young person who is not legally represented in that court unless —
 - (a) he has applied for legal aid under the *Legal Aid Act, 2015 [Law 17 of 2015]* and the application was refused on the ground that it did not appear that that person's means were such that that person required assistance; or
 - (b) having been informed of that person's right to apply for assistance in accordance with that Act and having had the opportunity to do so, that person refused or failed to apply.

Custodial sentences for murder and other grave crimes before the Grand Court

2. (1) Where a young person is found guilty before the Grand Court of —
 - (a) murder; or
 - (b) any other offence the sentence for which is fixed by law as imprisonment for life, the court shall sentence that person to imprisonment during the court's pleasure.
- (2) Where a young person is found guilty of any other offence before the Grand Court for which a person who has attained the age of seventeen would be liable to imprisonment for life, the court shall, if it considers that a custodial sentence would be appropriate, sentence that person to imprisonment during the court's pleasure.

Custodial sentences for offences punishable in the case of adults with imprisonment

3. Where a young person is found guilty before any court of any offence other than an offence mentioned in paragraph 2, punishable in the case of a person who has attained the age of seventeen with imprisonment, then, if the court is of the opinion that none of the other methods in which the case may legally be dealt with is suitable, the court may sentence the offender to be detained for such period, not exceeding the maximum term of imprisonment with which the offence is punishable in the case of a person who has attained the age of seventeen, as may be specified in the sentence.

Sentences of detention at rehabilitation schools

4. Where a young person is found guilty of any offence, other than an offence mentioned in paragraph 2, the court may sentence that person to be detained at any rehabilitation school, which the court orders that person to attend under paragraph (a) of section 20(3), in accordance with the provisions of the Second Schedule.

Place and conditions of detention

5. Where any sentence of detention has been passed with respect to a young person under paragraph 2 or 3, that person shall be liable to be detained in such place (including a prison) and subject to such conditions as the court may direct, and while so detained shall be deemed to be in legal custody.

Qualifications for custodial sentence under paragraph 3

6. (1) A court may not pass a sentence of detention under paragraph 3 unless it is satisfied —
- (a) that the circumstances, including the nature and the gravity of the offence, are such that if the offender were aged seventeen or over the court would pass a sentence of imprisonment; and
 - (b) that the offender qualified for a custodial sentence.
- (2) An offender qualifies for a custodial sentence if —
- (a) he has a history of failure to respond to non-custodial penalties and is unable or unwilling to respond to them;
 - (b) only a custodial sentence would be adequate to protect the public from serious harm from that person ; or
 - (c) the offence of which that person has been found guilty was so serious that a non-custodial sentence for it cannot be justified.
- (3) Where any court passes a sentence of detention under paragraph 3 it shall be its duty —



- (a) to state in open court that it is satisfied that that person qualified for a custodial sentence under one or more of the subsubparagraphs of subparagraph (2), the subsubparagraph or subsubparagraphs in question and why it is so satisfied; and
- (b) to explain to the offender in open court and in ordinary language why it is passing a custodial sentence on that person .

Consecutive sentences of detention

7. Where a young person is found guilty of more than one offence for which that person is liable to a sentence of detention under this Schedule, or a young person who is serving a sentence of detention imposed in accordance with this Schedule is found guilty of one or more further offences for which that person is liable to such a sentence, the court shall have the same power to pass consecutive sentences of detention under this Schedule as if they were sentences of imprisonment.

SECOND SCHEDULE

(section 27)

Youth Rehabilitation Orders

Youth rehabilitation orders

1. (1) A youth rehabilitation order may be varied, suspended, discharged or reviewed —
 - (a) by the court that made it, on its own motion or on the application of any authorised person; or
 - (b) by any court on the application of any authorised person.
- (2) A youth rehabilitation order shall not extend beyond the date on which the offender in respect of whom the order was made attains the age of nineteen years.
- (3) A youth rehabilitation order may, subject to subparagraph (2), require the detention of the offender at a rehabilitation school for such period not exceeding three years or the length of the order, whichever is the less, as the court thinks fit.
- (4) In this paragraph —

“**authorised person**” means —

 - (a) a social worker or probation officer; and
 - (b) after an order has been in force for one year, the young person with respect to whom the order was made.
- (5) Paragraph 4 makes further provision with respect to the suspension of a youth rehabilitation order.

Supplementary provisions as to detention

2. (1) Where a rehabilitation order requires the detention of a young person at a rehabilitation school, and accommodation for the person at such a school is not immediately available, the court may —
 - (a) commit the offender to the care of such person mentioned in subparagraph (2) as the court, having regard to all the circumstances, thinks fit, or
 - (b) make any order —
 - (i) under section 20; or
 - (ii) under any other powers available to it,



whether in lieu of or in addition to the rehabilitation order, as it thinks fit.

- (2) The persons are —
 - (a) a person carrying on a registered children’s home within the meaning of the *Children Act (2012 Revision)*;
 - (b) the child’s —
 - (i) parent;
 - (ii) guardian; or
 - (iii) other person having parental responsibility for that person ; or
 - (c) the officer in charge of any police station or Northward Prison.
- (3) The court shall not make any committal order under subparagraph (1) unless it is satisfied that arrangements have been made by the person into whose care it proposes to commit the young person for that person’s accommodation under this paragraph.
- (4) A young person detained in pursuance of arrangements made for that person’s detention under this paragraph by —
 - (a) a person carrying on a registered children’s home within the meaning of the *Children Act (2012 Revision)*; or
 - (b) the officer in charge of any police station or Northward Prison,shall be deemed to be in legal custody.
- (5) An order made under subparagraph (1) shall include such provisions for the review of the committal as the court thinks fit having regard to —
 - (a) the person into whose care the offender has been committed;
 - (b) the likelihood of accommodation at a rehabilitation school becoming available; and
 - (c) the length of the rehabilitation order.

Offences

3. (1) A young person who has been ordered to attend a rehabilitation school under a youth rehabilitation order is guilty of an offence —
 - (a) if that person fails to attend that school as required by the order;
 - (b) where the order has required that person’s detention at that school and that person is absent from that school on temporary leave of absence or on licence —
 - (i) if that person absconds from the person in whose charge that person is;
 - (ii) if that person fails to return to the school at the end of that person’s leave or licence; or

- (iii) where that person is absent under supervision, that person fails to return to the school on being recalled; or
 - (c) if that person contravenes any other requirement of the rehabilitation order.
- (2) A young person guilty of an offence under subparagraph (1) —
- (a) in respect of an offence under subparagraph (b) of that subparagraph, may be apprehended without warrant by a constable and returned to the rehabilitation school; and
 - (b) is liable, on summary conviction, to such order under section 20, including such further rehabilitation order, as the court thinks fit.
- (3) Any person who knowingly —
- (a) aids or abets a young person to commit an offence under subparagraph (1);
 - (b) harbours or conceals a young person who has absconded or failed to return as specified in subparagraph (b) of that subparagraph; or
 - (c) discloses any information relating to a young person attending a rehabilitation school without the prior authority of the court which made the rehabilitation order,

is guilty of an offence and liable on summary conviction to a fine of two thousand dollars and to imprisonment for three months.

Suspension of youth rehabilitation order

4. (1) The court that made a youth rehabilitation order may, subject to such conditions as it thinks fit, direct the suspension of a youth rehabilitation order.
- (2) An offender with respect to whom an order has been suspended under this paragraph shall be subject to the supervision of a probation officer or social worker until the end of the period of the suspension.
- (3) The offender shall be given a notice from the person responsible for that person's supervision specifying the conditions with which the offender must comply during the period of supervision.
- (4) Where —
- (a) a youth rehabilitation order has been suspended as respects an offender; and
 - (b) it appears on information to a justice of the peace that the offender has failed to comply with any of the conditions imposed by the person responsible for the offender's supervision under subparagraph (3),
- the justice may issue a summons requiring the offender to appear before the court which suspended the order at the place and time specified in the summons.



- (5) Where the information in subparagraph (4) is in writing and on oath, the justice may issue a warrant for the offender's arrest requiring that person to be brought before the court.
- (6) Where the court before which an offender appears or is brought under this paragraph is satisfied that that person has failed to comply with any conditions imposed by the person responsible for the offender's supervision under subparagraph (3), the court may —
 - (a) order that the suspension is revoked and the offender be required to attend a rehabilitation school for the remaining period of the order which was suspended;
 - (b) order the offender to be detained at a rehabilitation school for such period, not exceeding any period of attendance ordered under subparagraph (a), as it thinks fit; or
 - (c) make such further order under section 20(1) (including a youth rehabilitation order) as, in all the circumstances, it thinks fit.
- (7) Where accommodation for an offender with respect to whom the court decides to make a youth rehabilitation order under subparagraph (6) is not immediately available, paragraph 2 shall apply in relation to that person .

Approval of rehabilitation schools

5. (1) A person carrying on any educational or training activity on premises, whether or not in the Islands, may apply to the Cabinet to approve those premises for the purposes of this Act.
- (2) The Cabinet may, after making such enquiries as the Cabinet thinks fit, approve —
 - (a) the premises described in an application; and
 - (b) any part of those premises or any other premises on which the applicant carries on educational or training activities,
 as a rehabilitation school for the purposes of this Act.
- (3) An approval of a rehabilitation school —
 - (a) may be granted subject to such conditions as the Cabinet thinks fit; and
 - (b) may be revoked on not less than six months' notice given by the Cabinet to the person carrying on the school.
- (4) The Cabinet may, at any time during the period that any premises are approved as a rehabilitation school —
 - (a) vary;
 - (b) add to; or
 - (c) discharge,

any conditions subject to which the approval was granted.

- (5) Any variation, addition or discharge of conditions shall take effect one month after service of notice on the person carrying on the school of that variation, addition or discharge.
- (6) If any condition imposed or varied on a person carrying on a rehabilitation school in the Islands is not complied with, that person, if that person has no reasonable excuse, is guilty of an offence and liable on summary conviction to a fine of five thousand dollars.
- (7) The person carrying on an approved school may give to the Cabinet not less than six months' notice of that person's intention —
 - (a) to cease; or
 - (b) to vary materially,the educational or training activities carried on at the school.

Provisions supplementary to approval of rehabilitation schools

6. (1) Subject to subparagraph (2), the person carrying on an approved rehabilitation school is under a duty —
 - (a) to receive at the school any person who is ordered to attend it;
 - (b) to accommodate at the school any person who is ordered to be so accommodated; and
 - (c) to detain at the school any person who is ordered to be so detained.
- (2) The duty does not apply where a court, on the application of the person carrying on the school, is satisfied that there are already as many persons receiving education or training at the school or are accommodated or detained there as in all the circumstances is desirable.
- (3) A person carrying on an approved rehabilitation school in the Islands who fails without reasonable excuse to carry out that person's duty under subparagraph (1) is guilty of an offence and liable on summary conviction to a fine of five thousand dollars.
- (4) A copy of an order under section 20 or paragraph 4 of this Schedule requiring —
 - (a) the attendance of an offender at a rehabilitation school; or
 - (b) the detention of an offender at such a school,shall be sent to the person carrying on the school as evidence of the duty imposed by the order on that person with respect to the offender.



**Publication in consolidated and revised form authorised by the Cabinet this 5th day
of January, 2021.**

Kim Bullings
Clerk of Cabinet

Notes: (not forming part of this Act) —

1. The Rules Committee of the Grand Court has issued relevant rules under the Children Act (2012 Revision)(see PDs 6/2012, 10/2014, 13/2014, 15/2014 and 16/2014).

ENDNOTES

Table of Legislation history:

SL #	Law #	Legislation	Commencement	Gazette
	56/2020	Citation of Acts of Parliament Act, 2020	3-Dec-2020	LG89/2020/s1
	32/020	Youth Justice (Amendment) Law, 2020	7-Jul-2020	LG49/2020/s8
		Youth Justice Law (2019 Revision)	21-Feb-2019	LG4/2020/s14
	1/2018	Youth Justice (Amendment) Law, 2018	7-May-2018	G10/2018/s2
		Youth Justice Law (2005 Revision)	5-Sep-2005	G18/2005/s8
		Youth Justice Law (2001 Revision)	12-Mar-2001	G6/2001/s5
10/1996		Youth Justice Law, 1995 (Commencement) Order, 1996	12-Mar-1996	G6/1996/s1
	8/1995	Youth Justice Law, 1995	12-Mar-1996	GE20/1995/s1

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