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BILL No. 3 of 2009

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The following Bill which will be introduced in the National Assembly is published for general information.

S.E. Isaacs,
Clerk of the National Assembly.



GUYANA

BILL No. 3 of 2009

PROTECTION OF CHILDREN BILL 2009

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A BILL
Intituled

AN ACT to provide for the protection of children at risk, children in difficult circumstances and children in general and for related matters.

A.D. 2009 Enacted by the Parliament of Guyana:-

PART I
PRELIMINARY

Short title and commencement.

1. This Act may be cited as the Protection of Children Act 2009 and shall come into operation on a date appointed by order of the Minister.

Interpretation.

2. (1) In this Act –

"Board" means the Child Protection Board established under section 57 ;

“care” means the physical daily care and nurturing of a child;

"caregiver" means a person with whom a child is placed for care with the approval of the Director and who, by agreement with the Director, has assumed responsibility for the care of the child but does not include a parent or a day care centre;

"child" means a person under the age of eighteen years, whether born in or out of wedlock, who has never been married, and includes -

- (a) a stepchild or child adopted by law; or
- (b) a child of the family;

except that in the case where a child has special needs that child shall be a child under this Act regardless of his age;

"child care organisation" means an organisation -

- (a) which is concerned with the provision of accommodation, social services or health care services to children or the supervision of children; and
- (b) which fulfils other conditions as may be prescribed;

"child care position" means a position which -

- (a) is concerned with the provision of accommodation, social services or health care services to children or the supervision of children; and
- (b) is such as to enable the holder to have regular contact with children in the course of his duties;

"Court" means the High Court;

"custody" means custody within the meaning of the laws relating to custody, access, guardianship and maintenance;

"Director" means the Director of the Childcare and Protection Agency appointed by the Minister;

"employment" -

- (a) means employment, whether paid or unpaid and whether under a contract for services, or otherwise than under a contract; and
- (b) includes an office established by or by virtue of a prescribed enactment, and references to an individual being employed shall be construed accordingly;

"mental impairment" means a state of arrested or incomplete development of mind which includes a significant impairment of intelligence and social functioning which results in that person having special needs;

"Minister" means the Minister who has responsibility for matters related to the welfare of children;

"organisation" means a body whether or not corporate or an individual who employs others in the course of business;

"parent" unless the context otherwise implies means a person's mother or father or stepmother or stepfather and includes adoptive parents as well as a person who has treated a child as a child of the family;

"physical impairment" means lacking part of or all of a limb, or having a defective limb, organ or mechanism of the body;

"protective intervention hearing" means the process where the Court makes an order with respect to protection of the child;

"registered medical practitioner" means a physician or other person registered as a medical practitioner by the Guyana Medical Council under the Medical Practitioners Act 1991.

Act 16 of 1991

PART II GENERAL PRINCIPLES

General principles.

3. This Part shall be interpreted and administered in accordance with the following principles -
 - (a) the overriding and paramount consideration in any decision made under this Act shall be in the best interests of the child;
 - (b) every child is entitled to be assured of personal safety, health and well-being;
 - (c) the family is the basic unit of society responsible for the safety, health and well being of the child;

- (d) the members of a community have a responsibility to support the safety, health and well-being of a child;
- (e) prevention activities are integral to the promotion of the safety, health and well-being of a child;
- (f) kinship ties are integral to a child's self-development and growth and if a child's safety, health and well-being cannot be assured in the context of the family, the extended family shall in the first instance be encouraged to care for the child provided that the Director or the Court, as the case may be, can be assured that the child's safety, health and well-being will not be at risk and that the best interests of the child have been considered;
- (g) the cultural heritage of a child shall be respected;
- (h) in the absence of evidence to the contrary, there shall be a presumption that a child twelve years of age or over is capable of forming and expressing an opinion regarding his care and custody;
- (i) the views of a child under twelve years shall be heard and considered once the child is of sufficient maturity and understanding;
- (j) removal of a child from home and familiar surroundings shall be a measure of last resort and shall be ordered only after due consideration has been given to the removal from the home of the person whose conduct or presence in the home is not in the best interest of the child;
- (k) where a child has been removed from his home to a foster home, there shall be a review every six months of the need to continue this arrangement; and
- (l) if in the interests of the child he cannot remain with or return to his immediate or extended family, the Court shall in arriving at its decision consider the continuous care and stability in the child's life and the child's age, needs and the requirement for a normal family environment.

Child, youth and family service principles.

4. The following principles apply to the provision of services under this Act whether provided by the State, Board or other persons or entities -

- (a) families shall be provided, to the extent possible, with services which support the safety, health, education and well-being of their children;
- (b) services shall be provided using the least intrusive means of intervention;
- (c) wherever possible, having regard to a child's age and level of development, the views and wishes of the child shall be sought and considered in providing services;
- (d) families shall be informed of the services which may be available to them to assist them in supporting a child's safety, health, education and well-being;

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Best interests of
child.

- (e) families shall be encouraged to participate in the identification, planning, provision and evaluation of services available to them; and
 - (f) services shall be provided in a manner that acknowledges a child's overall needs for safety, health, education and well-being.
5. All relevant factors shall be considered in determining a child's best interests, including -
- (a) the child's safety and health;
 - (b) the child's educational and developmental needs;
 - (c) where possible, the child's views and wishes;
 - (d) the importance of stability and continuity in the child's care;
 - (e) the continuity of a child's relationship with his family, including siblings or others with whom the child has a significant relationship;
 - (f) the child's geographic and social environment;
 - (g) the child's supportive environment outside the family, including child care and the school environment;
 - (h) the effect upon the child of a delay in judicial or other proceedings with respect to the child; and
 - (i) any issues to be considered where a child is HIV positive or has special needs.

PART III PROTECTIVE INTERVENTION

Definition of child
in need of
protective
intervention.

6. A child is in need of protective intervention where the child -
- (a) is, or is at risk of, being physically or emotionally harmed by the action or lack of appropriate action by the child's parent, guardian, person in whose care the child is left or other persons living in or visiting the household;
 - (b) is, or is at risk of, being sexually or emotionally abused or exploited by the child's parent, guardian, person in whose care the child is left or other persons living in or visiting the household;
 - (c) is, or is at risk of, being physically harmed by a person and the child's parent, guardian or person in whose care the child is left, does not protect or seek protection for the child;
 - (d) is, or is at risk of, being sexually abused or exploited by a person and the child's parent does not protect the child;
 - (e) is being emotionally harmed by a person;

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- (f) is in the custody or *de facto* custody of a person who refuses or fails to obtain or permit essential medical, psychiatric, surgical or remedial care or treatment to be given to the child when recommended by a qualified health practitioner;
- (g) is abandoned;
- (h) has no living parent or has a parent who is unavailable to care for him and who has not made adequate provision for his care;
- (i) is living in a situation where there is violence;
- (j) has -
 - (i) been left without adequate supervision;
 - (ii) allegedly killed or seriously injured another person or has caused serious damage to another person's property; or
 - (iii) on more than one occasion caused injury to another person or other living thing or threatened, either with or without weapons, to cause injury to another person or other living thing, either with the parent's encouragement or because the parent does not respond adequately to the situation; or
 - (iv) is being exposed to drugs, or obscene printed material or objects.

Duty to report.

- 7. (1) Where a person has direct information that a child is or may be in need of protective intervention, the person shall immediately report the matter to the Director, a probation officer appointed by the Public Service Commission or a police officer.
- (2) Where a person makes a report under subsection (1) the person shall report all the information in his possession.
- (3) Where a report is made to a police officer under subsection (1), the police officer shall immediately inform the Director of the said report, investigate the matter promptly, and inform the Director of the findings of the investigation.
- (4) This section applies, notwithstanding the provisions of any other law, to a person referred to in subsection (5) who, in the course of his professional duties, has reasonable grounds to suspect that a child is or may be in need of protective intervention.
- (5) Subsection (4) applies to every person who performs professional or official duties or is in a position of trust with respect to a child, including -
 - (a) a health care professional;
 - (b) a school principal, teacher, social worker, family counsellor, religious leader, operator or employee of a child care service;

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- (c) a police officer;
 - (d) an attorney-at-law; and
 - (e) a member of a non-governmental organization which provides special services for children.
- (6) A person pursuant to subsections (4) and (5) who is found to have had knowledge and failed to make a report commits an offence and shall be liable on summary conviction to a fine of fifty thousand dollars.
- (7) This section applies notwithstanding that the information is confidential or privileged, and an action does not lie against the informant unless the making of the report is done maliciously or without reasonable cause.
- (8) A person shall not interfere with or harass a person who gives information under this section.
- (9) A person who contravenes subsection (8) commits an offence and is liable on summary conviction to a fine of two hundred thousand dollars or to imprisonment for a term of twelve months.
- (10) Notwithstanding any other law, a complaint under subsection (8) shall be laid within three years from the day when the matter of the complaint arose.
8. (1) Upon receiving information that a child is or may be in need of protective intervention, the Director or a social worker shall assess whether the child is in need of protective intervention.
- (2) After the assessment, the Director or the social worker may -
- (a) determine that protective intervention is required;
 - (b) determine that protective intervention is not required;
 - (c) offer support services to the child and family;
 - (d) refer the child and family to other resources; or
 - (e) investigate further the child's need for protective intervention.
9. (1) A person who has custody of a child or a person who is entrusted with the care of a child shall, at a place where the child is located, permit the child to be visited and interviewed by the Director, a social worker or someone duly appointed by the Director, in private where in the opinion of the Director or social worker or that person appointed, it is appropriate to do so.
- (2) The Director, social worker or person appointed by the Director shall notify, where possible, the parent who has custody or a person who has care of the child of the interview and request the presence of that parent or a representative of the child at the interview.

Determining the
need for
protective
intervention.

Interview of child.

- (3) Subsection (2) shall not apply where the Director, social worker or person appointed by the Director determines that it would not be in the best interests of the child for this procedure to be followed.

**PART IV
COURT PROCEEDINGS**

Director denied
access to child.

10. (1) Where the Director or a social worker is denied access to a child where he believes that access to the child is necessary to determine if the child needs protective intervention, the Director or social worker may apply *ex parte* to a Judge for an order and the Judge may grant orders *inter alia* -
- (a) that a person disclose the location of the child;
 - (b) requiring a person to allow the Director or social worker to interview, visually and if necessary, medically examine the child;
 - (c) authorising the Director or social worker to remove the child from the place where the child is located for an interview or medical examination; and
 - (d) authorising a medical practitioner or other qualified health practitioner to examine the child.
- (2) A Court may grant any other order that is necessary for carrying out the provisions of paragraphs (a) to (d), inclusive.
- (3) The Judge may attach terms and conditions to an order under this section that the Judge considers appropriate.
- (4) Where a child is removed from the place where the child was located for an interview or medical examination, the Director or social worker shall return the child to the parent or other person who has care of the child from whom the child was removed unless the Director or social worker proceeds under section 14.
- (5) At the request of the Director or social worker, a police officer shall assist in enforcing an order made under subsections (1) and (4).

Location of child
not disclosed.

11. (1) Where a person does not comply with an order under section 10, a Judge may issue a warrant for the person's arrest to bring him before the Judge to explain why the order should not be enforced.
- (2) Where a person referred to in subsection (1) appears before a Judge and the Judge believes that the person's reasons for being unable or unwilling to comply with the order are not valid, the Judge may order that the person be imprisoned for thirty days.
- (3) The Court may draw adverse inferences during the hearing of the substantive matter until the person complies with the order under section 10.

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Order to produce
record.

12. (1) On application by the Director or social worker, a Judge may order a person to produce information that is written, photographed, recorded or stored by other means, or a certified copy of the record, for inspection by the Director or social worker where -
- (a) there are reasonable grounds to believe that the information is necessary for determining whether a child needs protective intervention;
 - (b) there are reasonable grounds to believe that the person has possession or control of the information; and
 - (c) the person has neglected or refused, upon request of the Director or social worker to produce the information.
- (2) Notice of the time, date and place of the hearing of the application under subsection (1) shall be served on the person against whom the order is sought.
- (3) Notwithstanding subsection (2), where the Director or social worker believes on reasonable grounds that the information may be destroyed if notice is given, an *ex parte* application may be made under subsection (1).

Child who needs
to be protected
from contact with
someone.

13. (1) Where there are reasonable grounds to believe that contact between a child and another person would cause the child to be in need of protective intervention, the Director or social worker may apply to a Court for an order to prohibit contact between the child and that person.
- (2) Where an *ex parte* application for an order has not been granted, the date set for hearing the application under subsection (1) shall be not later than two days after the application is made and notice of the hearing shall be served on the day the application is made or on the next working day.
- (3) Notice of the time, date and place of the hearing shall be served on -
- (a) the person against whom the *ex parte* order is sought;
 - (b) the child, if he or she is twelve years of age or over; and
 - (c) a parent of the child.
- (4) Where a Court is satisfied that there are reasonable grounds to believe that contact between a child and a person named in an application under subsection (1) would cause the child to be in need of protective intervention, the Court may do one or more of the following -
- (a) prohibit the person against whom the order is sought for a period of up to twelve months from contacting or interfering with or trying to contact or interfere with the child or from entering a place where the child is located or is usually located.
 - (b) prohibit the person against whom the order is sought for a period of up to twelve months from residing with the child or entering

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premises where the child resides, including premises that the person owns or has a right to occupy.

(c) where the Judge believes the person against whom the order is sought may not comply with an order under paragraph (a) or (b), the Court may order that person to -

(i) enter into a recognizance, with or without sureties, in an amount the Judge considers appropriate; or

(ii) report to a Judge, or to a person named by the Judge, for the period of time and at the times and places the Judge directs; and

(d) impose those terms and conditions that the Court considers appropriate for implementing the order and protecting the child.

(5) A failure to comply with subsection (4) (c) (i) shall be reported by the Director or a social worker to the Judge and the Judge shall take action as considered appropriate.

(6) Before an order to prohibit contact between a child and another person expires, the Director or social worker may apply to the Court and the Court may -

(a) vary the order;

(b) rescind the order; or

(c) extend the term of the order for one period of up to six months.

(7) At the request of the Director or social worker, a police officer shall assist in enforcing an order made under subsection (4).

(8) An order made under this section may be made at any time including, at or after another hearing.

(9) The person against whom an order is made under this section may appeal the said order in accordance with section 61.

Removal of child.

14. (1) In the event that the various types of intervention as provided for in section 8 have failed and a Director or social worker believes that a child is in need of protective intervention, he shall obtain an order of Court to remove a child.

(2) Where satisfied on the basis of a Director's or social worker's *ex parte* application that there are reasonable grounds to believe that a child is in need of protective intervention, a Judge may issue an order authorising the Director or social worker to enter the premises or a vehicle or board a vessel or aircraft, by force, if necessary, to remove a child.

(3) At the request of the Director or social worker, a police officer shall assist in enforcing an order issued under subsection (2).

(4) An order issued under subsection (2) shall have sufficient information to identify the child or premises where the child may be located.

- (5) The *ex parte* order shall be served on the parent of the child or organisation which has care of the child.
- (6) For the avoidance of doubt where the Director or social worker determines that it is in the best interest of the child to be removed from a restricted environment, the Director or social worker shall so remove the child and shall as soon as practicable thereafter make an application to the Court seeking direction for the child's care and placement.
- Time frame to hear matter. 15. The Court shall render its decision in writing on the matter referred in section 14 within ninety days of filing.
- Counselling prior to removal. 16. Where applicable, the Director or social worker may provide counselling to the child prior to the child's removal from the home or other location.
- Care of child after removal. 17. (1) Where a child is removed under section 14, the Director has interim care of the child until -
- (a) the child is returned under section 20 to the parent from whom the child was removed; or
- (b) a Court makes such order as it deems fit.
- (2) Where a child has been removed under section 14, the Director shall place the child in accordance with the provisions of section 41 herein.
- (3) While a child is in the Director's care, the Director or a social worker shall ensure the child is examined by a registered medical practitioner; and
- (4) The Director or social worker shall notify the parent from whom the child was removed that the child has undergone a medical examination.
- (5) While pursuant to a Court order, a child is hospitalised and is removed from his parent by a Director or social worker, the chief executive officer or Matron of the hospital and the attending registered medical practitioner shall be advised of the child's removal and that the child's care is the responsibility of the Director.
- (6) Should the child be found to be in need of special care then the Director shall obtain a special order of the Court to direct the hospital administration that the child is under the jurisdiction of the Director.
- (7) In the event that in the course of the child's treatment an invasive procedure is required, the Director shall seek the consent of the child's parents; if such consent is unreasonably withheld, the Director may make the decision in these circumstances in the best interests of the child or obtain a Court order as provided for by section 20.
- (8) Where the child in question is sixteen years or older, is conscious and capable of so giving, the Director shall seek and obtain the consent of the child for the administering of medical treatment, examination and evaluation in order to determine the medical status of the child.

Where the child is not removed.

18. (1) Where the Director or social worker believes on reasonable grounds that -
- (a) a child is in need of protective intervention but not urgently so;
 - (b) with the provision of protective intervention services the child's safety could be assured without removing the child;
 - (c) a parent or caregiver of the child is unwilling to accept protective intervention services for the child; or
 - (d) an organisation or a person (other than a parent) who is in charge of a child in respect of whom intervention is sought to be made and whose actions have not been in the child's best interests,

the Director or social worker shall file an application for an order of a Judge that the child is in need of protective intervention and for a protective intervention hearing.

- (2) A hearing under this section shall be held within fourteen days of the filing of the application under subsection (1).
- (3) Notice of the time and place of a hearing under this section shall be served within three days after the date for holding the hearing is obtained from the Court on -
 - (a) a parent or caregiver of the child;
 - (b) the child, where the child is twelve years of age or older; or
 - (c) an organisation who is in charge of a child.
- (4) Where an application is made under this section, a Judge may make an order under section 21.
- (5) With respect to section 17, this section and any other provisions on this Act, a Director may appear before a Judge or make an application to the Court with or without legal representation.

Medical treatment.

19. (1) Where the Director or social worker believes a child to be in need of protective intervention because of his parent's refusal to obtain or permit essential medical, psychiatric, surgical or remedial treatment that is recommended by a registered medical practitioner for the child, the Director or social worker may apply for an *ex parte* order authorising the treatment.
- (2) A parent and the child, where possible, where the child is twelve years of age or over, shall be notified of the time and place of a hearing under this section which shall commence within one day after filing the application.
 - (3) A Judge may hear the application at any time or place.
 - (4) Where a Court finds that a child needs protective intervention for a reason referred to in subsection (1), the Court may so declare and grant an order

authorising the treatment recommended by a registered medical practitioner.

- (5) Where a child is treated under an order under this section, no liability attaches to the person treating the child by reason only that the parent of the child did not consent to the treatment.
 - (6) Notwithstanding subsection (1) where a child is sixteen years or older, the Director or social worker shall seek to obtain the consent in writing of that child, if conscious and capable of so giving, to medical treatment.
 - (7) Nothing in this section shall be taken to limit or affect the right of a person to consent to or administer necessary medical treatment to a child in the best interests of the child or in accordance with medical treatment ordered by the Court.
- Plan for the child.
20. (1) Not later than ten days prior to a protective intervention hearing, the Director or social worker shall file with the Court a written plan for the child and provide a copy to those persons to whom notice of the hearing has been given.
 - (2) Not later than five days prior to a protective intervention hearing those persons to whom a copy of a plan has been given under subsection (1) may respond to the plan and file an alternate written plan with the Court and provide a copy to the Director or social worker.
 - (3) Before the conclusion of a hearing for a protective intervention order, a Court may -
 - (a) grant a temporary order -
 - (i) that the child be returned to the parent under the supervision of the Director or social worker until the conclusion of the protective intervention hearing;
 - (ii) that the child be placed in the care of a person other than the person from whom the child was removed under the supervision of the Director or social worker until the conclusion of the protective intervention hearing;
 - (iii) that the child remain in the care of the Director or social worker until the conclusion of the protective intervention hearing; or
 - (b) make a declaration that further inquiry needs to be made to determine whether the child is in need of protective intervention.
 - (4) At a protective intervention hearing a Court may give the parties to the hearing directions with respect to those matters that are relevant at a protective intervention hearing.
 - (5) A Court may attach those conditions to an order that it considers appropriate.

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- (6) When a Judge makes an order under this section, the Judge may grant a parent, or a person significant to the child, contact with the child.

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