

THE CHILD PROTECTION (AMENDMENT) BILL
(No. XXXIX of 2008)

Explanatory Memorandum

The object of this Bill is to amend the Child Protection Act to provide for a Child Mentoring Scheme.

I. SEEBUN

*Minister of Women's Rights, Child
Development and Family Welfare*

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ARRANGEMENT OF CLAUSES

Clause

1. Short title
 2. Interpretation
 3. Section 2 of principal Act amended
 4. New sections 3A to 3F inserted in principal Act
 5. Section 4 of principal Act amended
 6. Section 20 of principal Act amended
 7. Section 21 of principal Act amended
 8. New Schedules inserted in principal Act
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A BILL

To amend the Child Protection Act

ENACTED by the Parliament of Mauritius, as follows –

1. Short title

This Act may be cited as the Child Protection (Amendment) Act 2008.

2. Interpretation

In this Act –

“principal Act” means the Child Protection Act.

3. Section 2 of principal Act amended

Section 2 of the principal Act is amended by inserting in the appropriate alphabetical order the following new definitions –

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

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

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

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

4. New sections 3A to 3F inserted in principal Act

The principal Act is amended by inserting immediately after section 3, the following new sections –

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 age 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.

(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 with 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 parent.

(4) (a) The Scheme shall be administered by the Permanent Secretary, with the assistance of the Committee referred to in section 3B.

(b) The functions and duties 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 matter of a mentoring order;

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

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 and duties 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 for child mentors, as set out in the First Schedule, and advise the Permanent Secretary accordingly; and
- (g) carry out such other functions and duties 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 and duties 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 functions and 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 have been cancelled; and
- (iv) carry out such other functions and 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 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.

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 child 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 contact 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 all requirements which may be prescribed for the effective implementation of the Scheme.

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) The 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, including 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 which 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 of 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 subsection (5)(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) A 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 provisions 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 the welfare of the child;
- (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 a child mentor is not discharging his duties under this Act or is acting in breach of the Code of Ethics for child mentors; 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 matter 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.

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 of the said order, at such regular intervals as he thinks fit.

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.

5. Section 4 of principal Act amended

Section 4 of the principal Act is amended in subsection (2), by inserting immediately after the words “in the form set out in the”, the word “Second”.

6. Section 20 of principal Act amended

Section 20 of the principal Act is amended –

- (a) by numbering the existing section as subsection (1); and
- (b) by adding the following new subsections –

(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 for child mentors.

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

7. Section 21 of principal Act amended

Section 21 of the principal Act is amended by adding immediately after subsection (3), the following new subsection –

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

8. New Schedules inserted in principal Act

The principal Act is amended by –

- (a) inserting immediately before the existing Schedule, the Schedule to this Act; and
- (b) renumbering the existing Schedule as the Second Schedule.

SCHEDULE (section 8)

FIRST SCHEDULE (section 3B)

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 time take into account the opinion of the child and act in his best interest.
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