

THE CHILDREN'S COURT BILL

(No. XVIII of 2020)

Explanatory Memorandum

The object of this Bill is to provide for the establishment of the Children's Court, which will have jurisdiction to hear and determine cases involving children. The establishment of this dedicated and specialised Court has been rendered necessary with a view to ensuring, in a child-friendly environment, the best interests of children during Court proceedings.

2. The Children's Court, before which proceedings shall be instituted and conducted in the same manner as proceedings before the Intermediate Court, shall consist of –

- (a) a Protection Division which shall have jurisdiction to hear and determine, inter alia, any application in respect of child protection matters under the Children's Act 2020; and
- (b) a Criminal Division which shall have jurisdiction to hear and determine, inter alia, sexual offences against children and offences where children are witnesses thereto.

3. In addition, the Courts Act is being amended to empower the Family Division of the Supreme Court to hear and determine, inter alia, any action entered under the Code Civil Mauricien for adoption, sale of minor's rights, *ouverture de la tutelle*, appointment of guardian and sub guardian, *recherche de maternité*, *recherche de paternité* and *désaveu de paternité*.

K. D. KOONJOO-SHAH
*Minister of Gender Equality and
Family Welfare*

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BILL (No. XVIII of 2020)**

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A BILL

To provide for the establishment of the Children’s Court

ENACTED by the Parliament of Mauritius, as follows –

PART I – PRELIMINARY

1. Short title

This Act may be cited as the Children’s Court Act 2020.

2. Interpretation

In this Act –

“Criminal Division” means the Criminal Division of the Children’s Court;

“juvenile” means a person aged 14 or above but below the age of 18;

“Magistrate” means a Magistrate of the Criminal Division or Protection Division, as the case may be;

“Protection Division means the Protection Division of the Children’s Court;

“supervising officer” means the supervising officer of the Ministry responsible for the subject of child development.

PART II – ESTABLISHMENT OF CHILDREN’S COURT

3. Children’s Court

(1) There shall be a specialised Court to be known as the Children’s Court, which shall be a Court of record and which shall have an official seal.

(2) The Children’s Court shall consist of –

- (a) a Protection Division, to be known as the Protection Division of the Children’s Court; and
- (b) a Criminal Division, to be known as the Criminal Division of the Children’s Court.

(3) Notwithstanding any other enactment, the Chief Justice may, for the proper administration of justice, direct that any case before any division of the Children’s Court be transferred to, and heard by, another Court.

(4) The Children’s Court shall sit in such place and at such time as the Chief Justice may direct.

4. Staff of Children’s Court

The Master and Registrar shall post to the Children’s Court such number of Court officers, Court Ushers and other public officers as may be necessary for the proper discharge of the Court’s functions.

PART III – DIVISIONS OF CHILDREN’S COURT

Sub-Part A – Protection Division of Children’s Court

5. Jurisdiction of, and proceedings before, Protection Division

(1) The Protection Division shall, notwithstanding any other enactment, have jurisdiction to hear and determine –

- (a) any application under Part IV of the Children’s Act 2020; and
- (b) such other matter as the Chief Justice may direct.

(2) Subject to this Act, and to any specific procedural provisions in any other enactment, all proceedings before the Protection Division shall be instituted and conducted in the same manner as proceedings in a civil matter before a

Magistrate of the Intermediate Court.

(3) Every order or judgment of the Protection Division shall be enforced as if it were an order or judgment of a Magistrate of the Civil Division of the Intermediate Court.

6. Magistrate of Protection Division

(1) The Chief Justice shall designate one or more Magistrates of the Intermediate Court to exercise jurisdiction in the Protection Division.

(2) Where a Magistrate is assigned to the Protection Division, his tenure as Magistrate of the Intermediate Court shall not be affected and the Magistrate shall have full power to hear and determine any case within the jurisdiction of the Intermediate Court.

(3) No act done by a Magistrate shall be void or impeachable by reason that a case should have been heard by the Protection Division other than that to which he has been assigned to.

7. Appeal against decision of Protection Division

(1) Notwithstanding any other enactment, the supervising officer or the parent of a child may appeal to the Judge in Chambers against any order made by a Magistrate of the Protection Division under section 37(4) or 39(4), or any variation made under section 37(5) or 39(5), of the Children's Act 2020.

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

(3) (a) Notwithstanding any other enactment, the Judge in Chambers may, upon the application in writing of any interested party, appoint a guardian ad litem to appeal on behalf of the child.

(b) Where the Judge in Chambers is satisfied that it is in the best interests of the child to do so, it shall appoint a guardian ad litem.

(c) The guardian ad litem shall –

(i) advocate for the best interests of the child before the Court; and

(ii) monitor the best interests of the child, including any impact on the child caused by the involvement in the justice process, throughout the judicial proceedings.

(4) Where a guardian ad litem is appointed to appeal on behalf of the child, the Judge in Chambers may entertain an appeal lodged outside the time limit

specified in subsection (2).

(5) An appeal under this section shall be made in the same manner as an application made to a Judge in Chambers under the Supreme Court (Judge in Chambers) Rules 2002.

Sub-Part B – Criminal Division of Children’s Court

8. Jurisdiction of, and proceedings before, Criminal Division

(1) The Criminal Division shall, notwithstanding any other enactment, have jurisdiction to hear and determine –

- (a) in the case of a child victim, any criminal offence specified in Part I of the Schedule which is committed on the child;
- (b) in the case of a child witness, any criminal offence specified in Part II of the Schedule where the child is a witness;
- (c) in the case of a juvenile offender, any criminal offence committed by the child, other than an offence specified in Part III of the Schedule;
- (d) such other matter as the Director of Public Prosecutions may, depending on the seriousness of the case and where he considers it to be in the best interests of a child victim, child witness or juvenile offender, lodge before it; and
- (e) such other matter as may be prescribed.

(2) Subsection (1)(c) shall apply where the offender, at the time of being formally charged before the Criminal Division, is still a juvenile.

(3) A Magistrate of the Criminal Division shall, where a child is involved, have jurisdiction to hold a preliminary inquiry in relation to offences specified in section 116(2) of the Courts Act.

(4) Subject to this Act, and to any specific procedural provisions in any other enactment, all proceedings before the Criminal Division of the Children’s Court shall be instituted and conducted in the same manner as proceedings in a criminal matter before a Magistrate of the Intermediate Court.

(5) Every order or judgment of the Criminal Division shall be enforced as if it is an order or judgment of a Magistrate of the Criminal Division of the Intermediate Court.

9. Magistrate of Criminal Division

(1) The Chief Justice shall designate one or more Magistrates of the Intermediate Court to exercise jurisdiction in the Criminal Division.

(2) Where a Magistrate is assigned to the Criminal Division, his tenure as Magistrate of the Intermediate Court shall not be affected and the Magistrate shall have full power to hear and determine any case within the jurisdiction of the Intermediate Court.

(3) No act done by a Magistrate shall be void or impeachable by reason that a case should have been heard by the Criminal Division other than that to which he has been assigned to.

10. Prosecution for rape and sodomy on child

Where a person is prosecuted for the offence of rape under section 249(1) of the Criminal Code or for sodomy under section 250 of the Criminal Code on a child, the case shall be heard by 2 or more Magistrates of the Criminal Division.

11. Appeal against decision of Criminal Division

(1) An appeal against an order or final judgment of a Magistrate of the Criminal Division shall, subject to subsection (2), be made to the Supreme Court in the same manner specified in section 92 of the District and Intermediate Court (Criminal Jurisdiction) Act.

(2) An appeal against an order or judgment of a Magistrate of the Criminal Division may be made –

- (a) in the case of an order or judgment committing a juvenile to custody in a Rehabilitation Youth Centre or in a place of detention provided under this Act, or to the care of an institution, by the juvenile or his parent on his behalf;
- (b) in the case of an order requiring the parent of a juvenile to give security for his good behaviour, by the person required to enter into the recognisance;
- (c) in the case of an order requiring a person to contribute in respect of a juvenile committed to the care of an institution, by the person required to contribute.

**PART IV – PROCEEDINGS BEFORE CHILDREN’S COURT AND ANY OTHER
COURT INVOLVING CHILDREN**

12. Child-friendly environment

(1) Any Court proceedings involving a child shall be conducted in the following manner –

- (a) the proceedings shall be conducted in a language which is simple and comprehensible to the child, having due regard to the age and level of maturity of the child;
- (b) the Court shall ensure that appropriate arrangements are made –
 - (i) in the courtroom to hear the child’s evidence;
 - (ii) for the child to be accompanied by his parent, unless the Court designates another person to accompany the child where –
 - (A) the parent is the alleged perpetrator of the offence committed on the child;
 - (B) the child expresses a concern about being accompanied by his parent; or
 - (C) the Court considers that it is not in the best interests of the child to be accompanied by his parent.

(2) Every Court shall ensure that no person shall, in the course of Court proceedings –

- (a) treat a child in a manner which is disrespectful of the child’s dignity, taking into account the child’s personal situation and immediate and special needs, age, gender, disability, if any, and level of maturity;
- (b) require a child to give evidence against his will or without the knowledge of any of his parents.

(3) Every Court shall ensure that a child is treated in a caring and sensitive manner which is respectful of his dignity throughout the proceedings, taking into account his personal situation and immediate and special needs, age, gender, disability, if any, and level of maturity.

13. Live video and television link

(1) Notwithstanding any other enactment, any Court may, in its discretion and on motion made by the prosecution, allow a child victim or child witness in relation to any offence specified in the Schedule to appear before it, and depose, through such live video or live television link system as the Chief Justice may approve in writing.

(2) The Court shall, in exercising its discretion under subsection (1), ensure that there is a fair hearing in the matter.

PART V – MISCELLANEOUS

14. Challenge

(1) No challenge shall be allowed against a Magistrate except on the ground of personal interest in any matter brought before him or of his being related to one of the parties by blood or marriage.

(2) A challenge against a Magistrate shall be deposited at the registry of the Children's Court and the Magistrate against whom the challenge is made shall either accept the challenge or set down in writing the reasons for not abstaining from hearing the matter.

(3) Where a Magistrate does not abstain from hearing a matter upon a challenge made against him, the reasons in answer to the challenge as set down under subsection (2) shall be transmitted to the Registrar for submission to a Judge in Chambers.

(4) The Judge in Chambers shall determine the question of challenge summarily, in the absence of the parties, and where the challenge is not admitted, may award costs not exceeding 500 rupees against the party having made the challenge.

(5) Where a Magistrate is of the opinion that he should abstain from hearing a matter, he shall give notice of his reason to the Chief Justice who shall thereupon take such steps as he thinks necessary for the hearing of the matter before any other Magistrate.

15. Rules

The Chief Justice may make such rules as he thinks fit for the purposes of this Act.

16. Regulations

The Attorney-General may, by regulations, amend the Schedule.

17. Consequential amendments

- (1) The Courts Act is amended –
- (a) in section 32(1)(b), by deleting the words “or Industrial Court” wherever they appear and replacing them by the words “, Industrial Court or Children’s Court”;
 - (b) in section 34(1), by deleting the words “District and Industrial Courts” and replacing them by the words “District Courts, the Intermediate Court, the Industrial Court, the Protection Division of the Children’s Court”;
 - (c) in section 38(1), by deleting the words “, District and Industrial Courts” and replacing them by the words “and District Courts, the Industrial Court and the Criminal Division of the Children’s Court”;
 - (d) in section 41C, by inserting, after paragraph (b), the following new paragraphs, the word “and” at the end of paragraph (b) being deleted and the existing paragraph (c) being relettered as paragraph (e) –
 - (c) any action entered under the Code Civil Mauricien for adoption, sale of minor’s rights, *ouverture de la tutelle*, appointment of guardian and sub guardian, *recherche de maternité*, *recherche de paternité* and *désaveu de paternité*;
 - (d) any action under the Convention on the Civil Aspects of International Child Abduction Act; and
 - (e) in section 69(1), by inserting, after paragraph (f), the following new paragraph –
 - (fa) the Children’s Court;
 - (f) in section 112(d) –
 - (i) by deleting the words “251,”;
 - (ii) by deleting the words “Criminal Code” and replacing them by the words “Criminal Code, other than an offence specified in section 8(1) of the Children’s Courts Act 2020”;
 - (g) in section 116 –

- (i) by numbering the existing provision as subsection (1);
- (ii) in the newly numbered subsection (1) –
 - (A) by deleting the words “A District Magistrate” and replacing them by the words “Subject to subsection (2), a District Magistrate”;
 - (B) in paragraph (a), by deleting the words “251,”;
- (iii) by adding the following new subsection –

(2) A Magistrate of the Criminal Division of the Children’s Court shall have no jurisdiction to convict, but shall proceed to hold a preliminary inquiry and, if necessary, to commit for trial, in accordance with the law on preliminary inquiries and commitment for trial, if an accused, being a juvenile aged 14 or above but below the age of 18, is charged with any of the following offences –

- (a) an offence under section 249(1) and (4) of the Criminal Code;
 - (b) an offence which, under any other enactment, is punishable by penal servitude for life.
- (h) in section 124(2), by deleting the words “Industrial or Intermediate Court” and replacing them by the words “Industrial Court, Intermediate Court, or Children’s Court”;
 - (i) in section 161, by deleting the definition of “sexual offence case”;
 - (j) in section 161B, by deleting the words “a complainant in a sexual offence case or”;
 - (k) in section 188B(5), by adding the following new paragraphs, the full stop at the end of paragraph (d) being deleted and replaced by a semicolon –
 - (e) in the case of the Children’s Court, by any Magistrate of the Children’s Court.

(2) The Criminal Appeal Act is amended, in section 16(3)(d)(iii), by deleting the words “Juvenile Offenders Act” and replacing them by the words “Children’s Act 2020”.

- (3) The Criminal Code is amended –
- (a) by repealing sections 44 and 45;
 - (b) in section 249 –
 - (i) in subsection (1A), by inserting, after the words “Intermediate Court”, the words “or the Criminal Division of the Children’s Court, as the case may be,”;
 - (ii) in subsection (1B), by inserting, after the word “Notwithstanding”, the words “the Children’s Act 2020 and”;
 - (c) by repealing sections 251 and 252.
- (4) The District and Intermediate Courts (Criminal Jurisdiction) Act is amended –
- (a) in section 92, by deleting the words “a Magistrate or before the Intermediate Court” and replacing them by the words “the District Court, the Intermediate Court, the Industrial Court or the Criminal Division of the Children’s Court”;
 - (b) in section 96(6)(d)(iii), by deleting the words “Juvenile Offenders Act” and replacing them by the words “Children’s Act 2020”.

18. Transitional provision and savings

(1) Any trial in relation to any offence specified in the Schedule which, prior to the commencement of this Act, has started and is pending before the Criminal Division of the Intermediate Court or a District Court shall, on the commencement of this Act, be continued and determined by that Court.

(2) Where a case in relation to any offence specified in the Schedule has, prior to the commencement of this Act, been lodged before the Criminal Division of the Intermediate Court or a District Court and the trial in relation to that case has not started, that case shall, on the commencement of this Act, be transferred to, and be heard and determined by, the Criminal Division of the Children’s Court.

19. Commencement

This Act shall come into operation on a date to be fixed by Proclamation.

SCHEDULE
[Section 8(1)]

OFFENCES

PART I – CHILD VICTIMS

1. An offence under the Children’s Act
2. An offence under section 228, 230, 231, 249, 250, 254, 260, 262, 303, 304, 305, 307, 310, 330, 331 or 343 of the Criminal Code
3. An offence under the Combatting of Trafficking in Persons Act
4. An offence under the Protection from Domestic Violence Act

PART II – CHILD WITNESSES

1. An offence under the Children’s Act
2. An offence under section 215, 216, 217, 218, 220, 222, 223, 228(3), 229, 230, 231, 249, 250, 303, 304, 305 or 310 of the Criminal Code
3. An offence under the Combatting of Trafficking in Persons Act
4. An offence under the Protection from Domestic Violence Act

PART III – JUVENILE OFFENDERS

1. An offence under section 215, 216, 217, 218, 220, 222, 223, 228(3), 229, 249 or 250 of the Criminal Code
 2. An offence under section 30 of the Dangerous Drugs Act
 3. An offence where the child is charged jointly with an adult
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