

CHILD PROTECTION

Act 30 of 1994 – 1 April 1995

P 6/95; Amended 22/03; 34/05

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1 Short title

This Act may be cited as the Child Protection Act.

2 Interpretation

In this Act –

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

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

“film” has the meaning assigned to it by the Films Act 2002;

[Added 22/03]

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

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

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

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

[Added 22/03]

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

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

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

"photograph" includes -

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

[Added 22/03]

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

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

[Added 22/03]

[Amended 15/98; 22/03]

3 Enquiry

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

4 Emergency protection order

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

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

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

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

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

5 Duration of order

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

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

[Amended 15/98]

6 Discharge of order

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

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

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

7 Follow-up action

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

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

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

8 Committal to place of safety

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

(2) Upon an application under subsection (1), the court –

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

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

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

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

[Amended 15/98]

9 Removal from place of safety

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

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

shall commit an offence.

10 Appeal

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

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

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

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

[Amended 15/98]

11 Duty to report

Notwithstanding any other enactment, where a person exercising any medical or paramedical profession or a member of the staff of a school has reason to suspect that a child he is examining or who is frequenting the school as the case may be, has been ill-treated, neglected, abandoned or otherwise exposed to harm, he shall immediately notify the Permanent Secretary.

[Amended 15/98]

12 Recording of statement

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

13 Ill-treatment

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

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

[Amended 15/98]

13A Child trafficking

(1) Any person who wilfully and unlawfully recruits, transports, transfers, harbours or receives a child for the purpose of exploitation shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 15 years.

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

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

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

shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 15 years.

(3) Any person, who, in any place outside Mauritius, does an act preparatory to, or in furtherance of, the commission of an offence under subsection (1), shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 15 years.

(4) (a) Any person who takes part in any transaction the object or one of the objects of which is to transfer or confer, wholly or partly, temporarily or permanently, the possession, custody or control of a child in return for any valuable consideration shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 15 years.

(b) Any person who, without lawful authority or reasonable excuse, harbours or has in his possession, custody or control of any child in respect of whom the temporary or permanent possession, custody or control has been transferred or conferred for valuable consideration by any other person in or outside Mauritius, shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 15 years.

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

(b) Any person who contravenes paragraph (a) shall commit an offence and shall, on conviction, be liable in respect of each offence to a fine not exceeding 100,000 rupees and to imprisonment for a term not exceeding one year.

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

(7) In this section -

"exploitation" includes the exploitation of the prostitution of children or other forms of sexual exploitation, forced labour or services, slavery or , practices similar to slavery, servitude or the removal of organs.

[Added 34/05]

13B Abandonment of child

(1) Any person who, for pecuniary gain or by gifts, promises, threats or abuse of authority, incites the parents of a child to abandon the child or a child to be born shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 8 years.

(2) Any person who, for pecuniary or other gain, acts as an intermediary between a person wishing to adopt a child and a parent willing to abandon a child or a child to be born, shall commit an offence and shall, on conviction, be liable to a fine not exceeding 500,000 rupees and to penal servitude for a term not exceeding 15 years.

(3) Any person who exposes and abandons in a secluded spot any child, and any person who orders the child to be exposed, where such order has been executed, shall, for such act alone, be liable, on conviction, to a fine not exceeding 250,000 rupees and to imprisonment for a term not exceeding 5 years.

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

(5) Any person who exposes and abandons a child in a spot that is not secluded, shall, on conviction, be liable to a fine not exceeding 100,000 rupees and to imprisonment for a term not exceeding 2 years.

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

[Added 34/05]

13C Abducting child

- (1) Any person who, by force or fraud, without the consent of the legal custodian -
- (a) takes away or causes to be taken away a child; or
 - (b) leads away, decoys, entices or causes to be led away, decoyed or enticed, a child out of the keeping of the custodian or from any place where the child has been placed or is with the consent of the custodian,

shall commit the offence of abduction, and shall, on conviction, be liable to penal servitude for a term not exceeding 12 years.

(2) Any person who unduly fails to present a child to the person who has the right to claim the child, shall commit an offence and shall, on conviction, be liable to a fine not exceeding 100,000 rupees and to imprisonment for a term not exceeding 2 years.

(3) In the case specified in subsection (1), where the abduction is committed without fraud or violence, the offender shall be liable to penal servitude for a term not exceeding 8 years.

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

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

[Added 34/05]

14 Sexual offences

- (1) Any person who causes, incites or allows any child –
- (a) to be sexually abused by him or by another person;
 - (b) to have access to a brothel;
 - (c) to engage in prostitution,

shall commit an offence.

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

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

15 Indecent photographs of children

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

shall commit an offence.

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

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

(3) Where -

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

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

[Added 22/03]

16 Licensed premises

- (1) (a) No person shall sell any liquor, rum or compounded spirits to a child.
- (b) Any person who causes or allows a child to have access to premises in respect of which a licence has been issued for the sale of liquor, rum or compounded spirits for consumption on the premises other than premises in respect of which –
- (i) a restaurant (liquor, rum and compounded spirits) retailer licence; or
 - (ii) a hotel or boarding house keeper (liquor, rum and compounded spirits) retailer licence

has been issued, shall commit an offence.

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

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

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

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

shall commit an offence.

(4) The licensee of –

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

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

[Amended 15/98]

17 Mendicity

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

18 Offences and penalties

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

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

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

(4) Any person who commits an offence under section 9, 13 or 16 shall, on conviction, be liable to a fine not exceeding 10,000 rupees and to imprisonment for a term not exceeding 2 years.

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

(a) where the victim is mentally handicapped, to penal servitude for a term not exceeding 15 years;

[Amended 34/05]

(b) in any other case, to penal servitude for a term not exceeding 10 years.

[Amended 34/05]

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

[Added 34/05]

(6) Any person who commits an offence under this Act for which no specific penalty is provided shall, on conviction, be liable to a fine not exceeding 5,000 rupees and to imprisonment for a term not exceeding one year.

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

(a) the forfeiture of any apparatus, article or thing which is the subject matter of the offence or is used in connection with the commission of the offence;

(b) that the material subject matter of the offence be no longer stored on and made available through the computer system, or that the material be deleted.

[Added 22/03]

19 Jurisdiction

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

19A Extradition

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

[Added 22/03]

20 Protection from liability

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

21 Regulations

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

(2) Regulations made under subsection (1) may provide for the registration and control of foster homes, convents, charitable institutions, institutions for children and such other institutions for the welfare and protection of children as the Minister may deem fit, including institutions providing for the physical, psychological and social recovery of victims of harm or trafficking.

[Amended 34/05]

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

[Amended 15/98]

22-23 –

SCHEDULE
CHILD PROTECTION ACT
(section 4)

FORM A

INFORMATION ON OATH

In the district of

Mr/Mrs

(Permanent Secretary of the Ministry of Women's Rights, Child Development and Family Welfare or any public officer designated by him/her)

MAKES OATH and says

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

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

believed to be found at

(address to be as clear as possible)

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

.....
.....

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

Sworn before me

District Magistrate

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

CHILD PROTECTION ACT
(Section 4)

FORM B
EMERGENCY PROTECTION ORDER

In the district of

To Mr/Mrs.....

(Permanent Secretary of the Ministry of Women's Rights, Child Development and Family Welfare or a public officer designated by him/her)

WHEREAS I am satisfied by information made ON OATH that

Mr/Mrs.....

has reasonable cause to believe that the child/children

.....

(name or description to be as precise as possible)

is/are suffering from or is/are likely to suffer significant harm and it is URGENT that this order be issued,

I THEREFORE confer upon you

.....AUTHORITY:

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

This order is VALID during 8 days to expire on..... 20.....

Given under my hand at.....in

the district of.....

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

This order is extended for a further period of 8 days to expire

on.....20.....

.....

District Magistrate

Date.....
