A MEDICAL PRACTITIONER’S GUIDE
TO THE NEW CHILD PROTECTION LEGISLATION
INTRODUCTION TO THE NEW CHILD PROTECTION SYSTEM ............................................. 3

THE CHILDREN'S AUTHORITY ACT, 2000 .......................................................... 3
THE CHILDREN ACT, 2012 .............................................................................. 3
THE CHILDREN'S COMMUNITY RESIDENCES, FOSTER CARE AND NURSERIES ACT, 2000 .......................................................... 3

PURPOSE AND OBJECTIVES OF THIS GUIDE ......................................................... 4

SIGNIFICANT CHANGES IN THE LAW RELATING TO CHILDREN .................................. 4

WHAT IS CHILD ABUSE? ............................................................................. 4
WHO IS A CHILD? .................................................................................. 4
SEXUAL PENETRATION OF A CHILD (NEW OFFENCE) .................................. 5
SEXUAL TOUCHING .................................................................................. 6
THE STATUTORY DEFINITION OF “SEXUAL” ............................................. 6

MANDATORY REPORTING ........................................................................... 6

“DECRIMINALISATION OF SEXUAL PENETRATION AND SEXUAL TOUCHING OF A CHILD UNDER CERTAIN CIRCUMSTANCES AS OUTLINED UNDER S.20 OF THE CHILDREN ACT 2012” .......................................................... 7

DEFINITION OF FAMILIAR RELATIONSHIP AND POSITION OF TRUST .................. 8

THE MARRIAGE DEFENCE ...................................................................... 9

POWERS AND FUNCTIONS OF THE AUTHORITY .......................................... 9

A CHILD IN NEED OF CARE AND PROTECTION .......................................... 10

POWERS / DUTY OF THE AUTHORITY TO “RECEIVE A CHILD INTO ITS CARE” .......... 11
MEDICAL PRACTITIONERS CAN SEEK THE ASSISTANCE OF THE AUTHORITY FOR “CARE AND PROTECTION” OF A CHILD .......................................................... 11

INVESTIGATION OF CHILD ABUSE AND MISTREATMENT ............................... 11

THE CHILD PROTECTION UNIT (CPU) OF THE TRINIDAD AND TOBAGO POLICE SERVICE 11
POWERS / DUTY OF THE AUTHORITY TO INVESTIGATE .................................. 12
POWERS / DUTY OF THE AUTHORITY TO REMOVE A CHILD IN IMMINENT DANGER ..... 12
INTRODUCTION TO THE NEW CHILD PROTECTION SYSTEM

On the 18th May 2015 a new package of Child Protection Legislation was proclaimed and as a result a new child protection system in Trinidad and Tobago became operational.

The three (3) main pieces of legislation relevant to the new child protection system are as follows:-

THE CHILDREN’S AUTHORITY ACT, 2000

The Children’s Authority Act, 2000 ("the CAA 2000") establishes the Children’s Authority of Trinidad and Tobago ("the Authority") to promote the wellbeing of all children and to provide care and protection for vulnerable children. The Act:

- Places the Authority at the centre of the new child protection regime;
- Provides a clear definition under Section 22(1A) of “a child in need of care and protection”;
- Empowers the Authority to intervene in the case of any child whom the Authority deems to be in need of care and protection and, where appropriate, to receive such child into its care and to seek the appropriate Court Orders for the assessment, if necessary, and care of such child.
- Empowers the Authority upon investigation, to remove a child from his home where it is shown that the child is in imminent danger (Section 5 (1)(e)), that is, there is a likelihood that the child may suffer physical, emotional, mental or psychological harm.

THE CHILDREN ACT, 2012

This Act repeals the Children Act, Chap. 46:01 which was in effect since 1925.

The 2012 Act modernizes the approach to child protection as follows:-

- A “child” is now legally defined as any person under the age of eighteen (18) years;
- There is now a wider and more comprehensive range of criminal offences for the protection of children against various forms of sexual abuse and other mistreatment;
- The Act provides the framework for a collaborative relationship between the Authority, the Police and the Court in the detection and management of child abuse cases.

THE CHILDREN’S COMMUNITY RESIDENCES, FOSTER CARE AND NURSERIES ACT, 2000

This Act establishes a new regulatory system for the licensing and monitoring of all Children’s Community Residences (Children’s Homes and Rehabilitation Centres) and Nurseries by the

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1 This also applies to the Children’s Authority Act Chap 46:10
Authority as well as the establishment of a Foster Care system which the Authority must also regulate.

**PURPOSE AND OBJECTIVES OF THIS GUIDE**

The purpose of this Guide is to equip the Medical Practitioner to understand:

(i) The significant changes brought about by the Children Act, 2012;

(ii) The reporting of matters to the Authority concerning children who are at risk or who are the subject of a report of mistreatment; and

(iii) The role of the Medical Officer in the provision of medical reports in relation to children who are the subject of a joint investigation by the police together with a Children’s Authority Children Services Associate (CSA).

**SIGNIFICANT CHANGES IN THE LAW RELATING TO CHILDREN**

**WHO IS A CHILD?**

Under the Children’s Authority Act, 2000 and the Children Act, 2012 a child is now defined as a person under the age of eighteen (18) years.

**WHAT IS CHILD ABUSE?**

**STATUTORY DEFINITION OF “CRUELTY TO A CHILD”**

The statutory definition of the criminal offence of “Cruelty to a Child” is now broadened under Section 4 of the Children Act, 2012 to cover all children under the age of eighteen (18) years.

Section 4 of the Children Act, 2012 provides that where a person has responsibility for a child and:

(a) The person *wilfully* assaults, ill-treats, causes or procures the child to be assaulted, ill-treated, neglected, abandoned, or exposed in a manner likely to cause that child suffering or injury to his physical, mental or emotional health; or

(b) An infant under the age of three years dies whilst in bed or any other place with that person and it is proved that –

   (i) The death was not caused by disease or any other medical cause; and
(ii) The person was, at the material time under the influence of drink, dangerous drugs or other substances having a similar effect and this resulted in the death of the child,

The person commits the offence of cruelty to a child.

The Children Act, 2012 amends the current Sexual Offences Act, 1986 (SOA) by:

- removing certain sexual offences against children which existed under the SOA; and
- consolidating these into a comprehensive list of new sexual offences against children.

The new range of sexual offences which may be committed against a child includes:

- **Sexual Penetration of a child** (section 18)
- **Sexual Touching** (section 19)
- **Paying for the sexual services of a child** (section 13)
- **Causing or inciting prostitution** (section 14)
- **Causing or inciting a child to engage in sexual activity with an animal** (section 22)
- **Engaging in sexual activity in the presence of a child** (section 23)
- **Causing a child to watch a sexual act** (section 24)
- **Meeting a child following sexual grooming** (section 25)
- **Female Genital Mutilation** (section 9)
- **Aiding and abetting, counselling or procuring female genital mutilation** (section 10)
- **New offences relating to Child Pornography** (Part VIII)

### SEXUAL PENETRATION OF A CHILD (NEW OFFENCE)

This occurs where the penetration is sexual.

“Penetration” includes-

(a) The insertion of any body part or any object into a child’s bodily orifice; or

(b) The insertion of a part of a child’s body into a person’s bodily orifice.

“**BODILY ORIFICE**” means anus, vagina, urethra, mouth, ear or nostril.

**Note:** Sexual Intercourse (Vaginal Intercourse) is only one form of sexual penetration.
WHAT IS THE AGE OF CONSENT TO SEXUAL PENETRATION?
Subject to section 20, the age of consent to sexual penetration under the Children Act, 2012 is eighteen years.

Note: Consent cannot be given to anal penetration.

SEXUAL TOUCHING
This occurs where, subject to section 20, a person touches a child and-

(a) the touching is sexual; and

(b) the child is under 16 years of age

WHAT IS THE AGE OF CONSENT TO SEXUAL TOUCHING?
The age of consent to sexual touching under the Children Act, 2012 is sixteen years, except as provided under section 20.

THE STATUTORY DEFINITION OF “SEXUAL”
Penetration, touching or any other activity is sexual if –

(a) it is not done for medically recognised purposes; and

(b) a reasonable person would consider that -

(i) the person’s purpose in relation to it, is, because of its nature, sexual; or

(ii) because of its nature it may be sexual and because of its circumstances or the purposes of any person in relation to it, or both, it is sexual. (Section 3(2)).

MANDATORY REPORTING
Section 31 of the Sexual Offences Act, 1986 provides for the mandatory reporting of sexual offences against minors by certain persons.

Section 31 (1) (a-d) of that Act states that:

(1) Any person who—

(a) is the parent or guardian of a minor;

(b) has the actual custody, charge or control of a minor;

2 See page 8
(c) has the temporary custody, care, charge or control of a minor for a special purpose, as his attendant, employer or teacher, or in any other capacity; or

(d) is a medical practitioner, or a registered nurse or midwife, and has performed a medical examination in respect of a minor;

and who has reasonable grounds for believing that a sexual offence has been committed in respect of that minor, shall report the grounds for his belief to a police officer as soon as reasonably practicable.

This has now been extended to sections 9, 10, 18 and 19 of the Children Act, 2012.3

The duty to report applies even when the medical practitioner has acquired the information through the discharge of professional duties or within a confidential relationship such as a doctor-patient relationship. While a medical practitioner may want to collect more information before reporting a suspected child sexual offence, she/he must exercise reasonable judgment about waiting for that proof without placing the child (and possibly other children such as siblings) in continuing danger.

The penalties on summary conviction for persons who fail to comply with the above requirements without a reasonable excuse is a fine of up to fifteen thousand dollars (TT$15,000.00) and/or to imprisonment for a term of up to seven (7) years.

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DECRIMINALISATION OF SEXUAL PENETRATION AND SEXUAL TOUCHING OF A CHILD UNDER CERTAIN CIRCUMSTANCES AS OUTLINED UNDER S.20 OF THE CHILDREN ACT 2012

(i) **Section 20(1)** provides that a person who is 16 years of age or over but under 21 years of age will not be liable if-

a. he is less than three years older than the child against whom he is purported to have perpetrated the offence;

b. he is not in a familial relationship with the child nor in a position of trust in relation to the child;

c. he is not of the same sex as the child; and

d. the circumstances do not reveal any element of exploitation, coercion, threat, deception, grooming or manipulation in the relationship.

(ii) **Section 20(2)** provides that a person who is 14 years of age or over but under 16 years of age will not be liable if-

a. he is less than two years older than the child against whom he is purported to have perpetrated the offence;

b. he is not in a familial relationship with the child nor in a position of trust in relation to the child;

c. he is not of the same sex as the child; and

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3 This is an amendment located in Schedule 3 to the Children Act, 2012.
d. the circumstances do not reveal any element of exploitation, coercion, threat, deception, grooming or manipulation in the relationship.

(iii) Section 20(3) provides that a person who is 12 years of age or over but under 14 years will not be liable if-

a. he is less than two years older than the child against whom he is purported to have perpetrated the offence;

b. he is not in a familial relationship with the child nor in a position of trust in relation to the child;

c. he is not of the same sex as the child; and

d. the circumstances do not reveal any element of exploitation, coercion, threat, deception, grooming or manipulation in the relationship.

DEFINITION OF FAMILIAL RELATIONSHIP AND POSITION OF TRUST

Under Section 32 of the Children Act, 2012, a person is within a familial relationship with a child if-

(a) the person is the child’s parent, grandparent, brother, sister, half-brother, half-sister, niece, nephew, aunt, uncle, or the spouse of an aunt or uncle;

(b) the person is or has been the child’s step-parent, step-brother or step-sister;

(c) the person is or has been the child’s foster parent or spouse or cohabitant of a foster parent;

(d) the person is in the process of seeking an adoption order in relation to the child who is in the care and control of the person for that purpose; and

(e) the person and the child live or have lived in the same household, or the person is or has been regularly involved in the caring for, training, supervising or being in sole charge of the child.

Under Section 30 of the Children Act, 2012, a person is in a ‘Position of Trust’ in relation to a child if he:

(a) is eighteen years of age and over and looks after a child who is placed in an institution by virtue of a Court order or under any written law and the child is so placed in that institution;

(b) looks after a child who is resident in a Community Residence or is at an Assessment and Support Centre or a Reception Centre maintained by the Authority or is cared for in a Nursery, or Foster Home under the Children’s Community Residences, Foster Care and Nurseries Act;

(c) is an employee, independent contractor or volunteer at an institution whose main purpose is to provide services to children;

(d) looks after a child who is receiving education at an educational institution but the person is not receiving education at that institution;

(e) is appointed to be the guardian of a child;

(f) is a person who has contact with a child, by any means, in the exercise of the functions of the Authority;

(g) is a person who is to report to the Court or the Authority under this Act, the Family Proceedings Act, the Children’s Authority Act or any other written law on matters relating to the welfare of the child, and has contact with the child by any means;
(h) is a personal adviser appointed for the child under any written law;
(i) is a constable, medical practitioner, nurse, social worker, teacher, scout master, troop leader, 
clergyman, spiritual leader, driver, sports coach or trainer or other person in authority in 
whose care the child is placed;
(j) is a person who is eighteen years and over who has control over or directs a child in respect 
of any work done by the child;
(k) is appointed to be the guardian ad litem of the child;
(l) has care or control of a child while that child is in a place of safety;
(m) looks after a child on an individual basis—
   (i) where the child is subject to a Foster Care Order, Care Order, Child Assessment 
       Order, Fit Person Order or any other order of the Court which deals with the 
       supervision of the child or supervision of the education of the child; and
   (ii) in the exercise of the functions conferred by virtue of the order of an authorised 
       person or the authority designated by order;
(n) looks after the child on an individual basis in pursuance of the requirements imposed on the 
    child by or under any written law on his release from placement for a criminal offence, or is 
    subject to requirements imposed by a Court order made in criminal proceedings; or
(o) is such other person as the Minister, after consultation with the Attorney General, may by 
    Order prescribe.

THE MARRIAGE DEFENCE

Section 26 of the Children Act, 2012 provides an absolute defence to the offences of Sexual 
Penetration of a Child (Section 18) and Sexual Touching of a Child (Section 19) where the 
person and the child were lawfully married at the time of the sexual intercourse or where 
the person believed on reasonable grounds that he was lawfully married to the child. The 
appropriate offences under the Sexual Offences Act, 1986 will be charged where consent was 
not given.

POWERS AND FUNCTIONS OF THE AUTHORITY

The Authority may have and exercise such powers and functions as are conferred on it by Section 
5(1) of the Children’s Authority Act 2000 and in particular may—

   (a) provide care, protection and rehabilitation of children in accordance with Part III of the Act;
   (b) investigate and make recommendations with respect to the adoption of children in accordance 
       with the Adoption of Children Act, 2000;
(c) investigate complaints made by any person with respect to any child who is in the care of a community residence, foster home or nursery, that the said residence, home or nursery failed to comply with the requisite standards prescribed under the Children’s Community Residences, Foster Care and Nurseries Act, 2000 and any incident of mistreatment of children in such places;

(d) investigate complaints or reports of mistreatment of children;

(e) upon investigation, remove a child from his home where it is shown that the child is in imminent danger;

(f) monitor community residences, foster homes and nurseries and conduct periodic reviews to determine their compliance with such requirements as may be prescribed;

(g) issue, suspend and revoke licences of community residences and nurseries as provided under the Children’s Community Residences, Foster Care and Nurseries Act, 2000;

A CHILD IN NEED OF CARE AND PROTECTION

The circumstances in which a child is considered to be in need of care and protection are defined under Section 22(1A) of the Children’s Authority Act, 2000 as follows:

(1A) A child is in need of care and protection where the child—

(a) has neither parent nor guardian who is fit to exercise care and guardianship;

(b) is lost or has been and remains abandoned by his parent or guardian;

(c) whose parent or guardian is prevented by—

(i) reason of mental or bodily disease;

(ii) infirmity or other incapacity; or

(iii) any other circumstances,

from providing for his up-bringing, and there is no available person or persons capable, fit or willing to undertake the care of such child;

(d) is exposed to moral danger;

(e) is beyond the control of his parent or guardian;

(f) is ill-treated or neglected in a manner likely to cause him suffering or injury to health;
(g) is destitute or is wandering without any settled place of abode and without visible means of subsistence;

(h) is begging or receiving alms;

(i) is found loitering for the purpose of begging or receiving alms;

(j) frequents the company of any criminal; or

(k) frequents the company of any common or reputed prostitute not being the mother of the child.

POWERS / DUTY OF THE AUTHORITY TO “RECEIVE A CHILD INTO ITS CARE”

Under Section 22(1) of the Children’s Authority Act, 2000, where the Authority is of the view that:

- A child is in need of care and protection and its intervention is necessary in the best interest of the child the Authority is mandated to take the following steps:

  1. It shall investigate the matter; and

  2. It shall be lawful where appropriate, for the Authority to receive the child into its care.

MEDICAL PRACTITIONERS CAN SEEK THE ASSISTANCE OF THE AUTHORITY FOR “CARE AND PROTECTION” OF A CHILD

Section 22(2) Children’s Authority Act, 2000 provides that:

“A police officer or any other person having reasonable grounds for believing that a child is in need of care and protection may seek assistance of the Authority for care or protection of such child.

INVESTIGATION OF CHILD ABUSE AND MISTREATMENT

THE CHILD PROTECTION UNIT (CPU) OF THE TRINIDAD AND TOBAGO POLICE SERVICE

The Child Protection Unit of the Trinidad and Tobago Police Service ("the CPU") has been specially established for the purpose of receiving reports of, investigating and prosecuting offences relating to children under the laws of Trinidad and Tobago.

In accordance with international best practice models for an inter-agency approach to effective child protection, the Authority and upper management of the CPU have devised a joint investigation protocol which sets out a comprehensive framework for a co-ordinated
response between the CPU and the Authority when it becomes necessary to investigate child abuse cases.

**POWERS / DUTY OF THE AUTHORITY TO INVESTIGATE**

The Authority is **mandated** under the Children’s Authority Act, 2000:

- To investigate complaints or reports of mistreatment of children *(Section 5 (1)(d))*;

- To investigate complaints made by any person with respect to any child who is in the care of a Community Residence, Foster home or Nursery re any failure to comply with the requisite standards and **any incident of mistreatment** of children in such places *(Section 5 (1)(c))*.

**POWERS / DUTY OF THE AUTHORITY TO REMOVE A CHILD IN IMMINENT DANGER**

The Authority has the power/duty **upon investigation**, to remove a child from his home where it is shown that the child is in **imminent danger** *(Section 5 (1)(e))*

* A child is in “Imminent Danger” if there likelihood that the child may suffer physical, emotional, mental or psychological harm”.

**Powers of the Police and Social Workers under the Children Act, 2012 to Take a Child to a Place of Safety**

*Section 45* of the **Children Act, 2012** provides that a police officer or a social worker in the categories specified at section 50 (2) may take to a place of safety, any child in respect of whom an offence under the Act or an offence specified in Schedule 1 has been, or there is reason to believe has been or is likely to be committed, and shall notify:

- a. The Authority;
- b. The parent, guardian or the person with responsibility for the child;
- c. A Children’s Attorney; and
- d. The police.

The section also provides that any other person authorised by a Court may take a child to a place of safety in the circumstances outlined above and such a person will also be obliged to notify the Authority and those persons mentioned at b, c, and d above.