

**Republic of Kiribati**

(No. of 2015)



I assent

*Aulo Tung*  
Beretitenti

*24 December, 2015*

**An Act  
entitled**

**AN ACT TO MAKE PROVISION FOR PROCEEDINGS IN REFERENCE TO JUVENILE  
OFFENDERS.**

Commencement

2015

MADE by the Maneaba ni Maungatabu and assented to by the Beretitenti.

**Short title:**

1. This Act may be cited as the Juvenile Justice Act 2015.

**Interpretation:**

2. In this Act, unless the context otherwise requires-

"lawyer" means any legal practitioner entitled to practise in the High Court;

"authorised representative" in relation to a party means a person, not being a lawyer, who is to the satisfaction of the court, authorised by a party to represent him or her in any cause or matter;

"child" means a person who is, in the opinion of the court having cognisance of any case in relation to such person, under the age of 14 years;

"court" means the magistrates court or the High Court exercising the powers under section 4;

"guardian", in relation to a child or young person, includes any person who, in the opinion of the court having cognisance of any case in relation to the child or young person or in which the child or young person is concerned, has for the time being the charge of or control over the child or young person;

"juvenile" means a child or a young person as defined in this Act;

"place of detention" means a place of detention provided for or appointed by the Minister under section 17;

"serious crime" means any crime specified in the Schedule, and the Minister may from time to time by order amend the Schedule;

"youth officer" is an officer working in the Ministry responsible for youths who deals with matters concerning the welfare of youths;

"young person" means a person who is, in the opinion of the court having cognisance of any case in relation to such person, 14 years of age or upwards and under the age of 18 years.

### **Juvenile Courts**

3. (1) A court, other than the High Court acting in the exercise of its criminal jurisdiction, when hearing or inquiring into charges against children or young persons shall, unless the child or young person is charged jointly with any other person not being a child or young person, sit whenever circumstances permit either in a different building or room from that in which the ordinary sittings of the court are held, and the court so sitting is in this Act referred to as a juvenile court.
- (2) Where, in the course of any proceedings in a juvenile court, it appears to the court that the person charged or to whom the proceedings relate is of the age of 18 years or upwards, or, where in the course of any proceedings in any court other than a juvenile court, it appears that the person charged or to whom the proceedings relate is under the age of 18 years, nothing in this section shall be construed as preventing the court, if it thinks it undesirable to adjourn the case, from proceeding with the hearing and determination of the case.
- (3) So far as circumstances permit, provision shall be made for preventing persons apparently under the age of 18 years whilst being conveyed to or from court, or whilst waiting before or after their attendance in court, from associating with any person not being a child or young person charged with or convicted of any offence with which the person apparently under the age of 18 years is charged or convicted jointly with any such person.
- (4) In a juvenile court, no person other than the members and officers of the court and

the parties to the case, their lawyers or authorised representatives, and other persons directly concerned in the case, shall, except by leave of the court, be allowed to attend:

Provided that-

- (a) bona fide representatives of any news agency or information service shall not be excluded, except by special order of the court; and
- (b) no person shall publish the name, address, school, photograph, or anything likely to lead to the identification of the child or young person before the juvenile court, save with the permission of the court or in so far as required by the provisions of this Act, and any person who acts in contravention of this subsection shall be guilty of an offence and liable to a fine of \$500 dollars or to imprisonment for 6 months, or to both such fine and such imprisonment.

#### **Bail of children and young persons arrested**

4. Where a person apparently under the age of 18 years is apprehended, with or without warrant, and cannot be brought forthwith before a juvenile court, a police officer of or above the rank of Inspector, or the officer in charge of the police station to which such person is brought, shall forthwith enquire into the case, and-
- (a) unless the case concerns a serious crime;
  - (b) unless it is necessary in the interests of such person to remove him or her from association with any undesirable person; or
  - (c) unless the officer has reason to believe that the release of such person would defeat the ends of justice,

shall release such person on a recognisance, with or without sureties, for such amount as will, in the opinion of the officer, secure the attendance of such person upon the hearing of the charge, such recognisance being entered into by him or her or by his parent or guardian or other responsible person.

#### **Custody of children and young persons not released on bail after arrest**

5. Where a person apparently under the age of 18 years having been apprehended is not released as aforesaid, the officer in charge of the police station to which such person is brought shall cause him or her to be detained in a place of detention until he or she can be brought before a juvenile court unless the officer certifies-
- (a) that it is no practicable to do so;
  - (b) that he or she is of so unruly or depraved a character that he or she cannot be safely so detained; or
  - (c) that by reason of his state of health or of his or her mental or bodily condition it is inadvisable so to detain him or her,

and the certificate shall be produced to the court before which the person is brought.

#### **Prevention of association with adults during detention**

6. It shall be the duty of the Commissioner of Police or other person having custody of a child or young person being detained to make arrangements for preventing so far as practicable such child or young person while being detained, from associating with any other person not being a child or young person, other than a relative or guardian, charged with an offence.

#### **Remand or committal to custody in a place of detention**

7. (1) A court on remanding or committing for trial a child or young person who is not released on bail shall, instead of committing him or her to prison, commit him or her to custody in a place of detention, or to the care or custody of any person, named in the commitment, to be detained or cared for, as the case may be, for the period during which he or she is remanded or until he or she is thence delivered in due course of law:

Provided that in the case of a young person it shall not be obligatory on the court so to commit him or her if the court certifies that he or she is of so unruly a character that he or she cannot be safely so committed, or that he or she is of so depraved a character that he or she is not a fit person to be so detained or cared for.

- (2) A commitment under this section may be varied, or , in the case of a young person who proves to be of so unruly a character that he or she cannot be safely detained in such custody, or cared for, as the case may be, or to be of so depraved a character that he or she is not a fit person to be so detained, or cared for, revoked by any court, and if it is revoked the young person may be committed to prison.

#### **Procedure in juvenile courts**

8. (1) Where a child or young person is brought before a juvenile court for any offence it shall be the duty of the court as soon as possible to explain to him or her in simple language the substance of the alleged offence.
- (2) If the court is satisfied that the child or a young person understands the nature of the alleged offence it shall (unless the alleged offence is homicide) ask the child or young person whether he or she admits the offence.
- (3) If the court is not satisfied that the child or young person understands the nature of the alleged offence, or if the child or young person does not admit the offence, the court shall then hear the evidence of the witnesses in support of the complaint or information. At the close of the evidence in chief of each such witness, the court shall ask the child or young person or, if it sees fit, the parent or guardian of the child or young person, whether he or she wishes to put any questions to the witnesses. If the child or young person instead of asking wishes to make a statement he or she shall be allowed to do so.
- (4) If it appears to the court that a prima facie case is made out, the evidence of any

witnesses for the defence shall be heard, and the child or young person shall be allowed to give evidence or to make any statement.

- (5) The court may for the purpose of assisting the child or young person in his or her defence or for the purpose of explaining anything in the statement of the child or young person, but not otherwise, put to such child or young person such questions as it may think necessary.
- (6) It shall be the duty of the court to put to the witnesses such questions as appear to be necessary and proper in the interests of the child or young person.
- (7) If the child or young person admits the offence or the court is satisfied that it is proved, he or she shall then be asked if he or she wishes to say anything in extenuation or mitigation of the penalty or otherwise.
- (8) Before deciding how to deal with the child or young person, the court shall obtain such information as may readily be available as to his or her general conduct, home surroundings, school record, and medical history, in order to enable it to deal with the case in the best interests of the child or young person and for this purpose may direct a youth officer to prepare and submit to it a report accordingly, and the court may put to the child or young person any questions arising out of such information or report, and for the purpose of obtaining such information or for special medical examination or observation or for the purpose of considering how to deal with the case in the best interests of the child or young person, the court may from time to time remand the child or young person on bail or to a place of detention.
- (9) If the child or young person admits the offence or the court is satisfied that it is proved, and the court decides that a remand is necessary for the purposes of inquiry or observation, the court may cause an entry to be made in the court register that the charge is proved and that the child or young person has been remanded and the court before which a child or young person so remanded is brought may without further proof of the commission of the offence make any order in respect of the child or young person which could have been made by the court which so remanded the child or young person.
- (10) Where a child or young person is brought before a juvenile court for any offence other than homicide, the case may be disposed of in such court.

**Attendance at court of parent of child or young person charged with an offence, etc.**

9. (1) Where a child or young person is charged with any offence or is brought before a court under this or any other Act, the court may in its discretion require the attendance of his or her parent or guardian and may make such orders as are necessary for the purpose.
- (2) Where a child or young person is arrested, the police officer by whom he or she is arrested or the officer in charge of the police station to which he or she is brought shall, if the parent or guardian lives within a reasonable distance and can be found, cause him or her to be warned to attend at the court before which the child or young

person will be brought.

#### **Power to order parent or guardian to pay fine, etc. instead of child or young person**

10. (1) Where a child or young person is charged before any court with any offence for the commission of which a fine, damages or costs may be imposed, and the court is of opinion that it would be best met by the imposition of a fine, damages or costs, whether with or without any other punishment, the court may in any case, and shall if the offender is a child, order that the fine, damages or costs awarded be paid by the parent or guardian of the child or young person, instead of by the child or young person, unless the court is satisfied that the parent or guardian cannot be found or that he or she has not conduced to the commission of the offence by neglecting to exercise due care of the child or young person.
- (2) Where a child or young person is charged with any offence, the court may order the parent or guardian to give security for his or her good behaviour.
- (3) Where a court is satisfied that a charge against a child or young person is proved, the court may make an order against the parent or guardian under this section for the payment of a fine, damages or costs or requiring him or her to give security for good behaviour, without proceeding to the conviction of the child or young person.
- (4) An order under this section may be made against a parent or guardian who, having been required to attend has failed to do so, but no such order shall be made without giving the parent or guardian an opportunity of being heard.
- (5) Any sums imposed and ordered to be paid by a parent or guardian under this section or on forfeiture of any such security as aforesaid, may be recovered from him or her in the manner provided by section 31 of the Penal Code, Cap 67, in like manner as if the order had been made on the conviction of the parent or guardian of the offence with which the child or young person was charged.
- (6) A parent or guardian may appeal against an order of a juvenile court made under this section in the manner prescribed by section 66 of the Magistrates' Courts Ordinance, Cap 52, the provisions of which section shall apply to any such appeal.

#### **Restriction on punishment of children and young persons**

11. (1) No child shall be sentenced to imprisonment or be committed to prison in default of payment of a fine, or costs.
- (2) No young person shall be sentenced to imprisonment if he or she can be suitably dealt with in any other way specified in section 15.
- (3) A young person sentenced to imprisonment shall not, so far as is practicable, be allowed to associate with prisoners not being children or young persons.

### **Detention in case of serious crimes committed by children or young persons**

12. Notwithstanding anything in this Act to the contrary, when a child or young person is convicted of a serious crime, the court may sentence the offender to be detained for such period as may be specified in the sentence; and where such a sentence is passed the child or young person shall, during that period, notwithstanding anything in the provisions of this Act, be liable to be detained and in such place and on such conditions as the Minister may in his or her discretion direct, and whilst so detained shall be deemed to be in legal custody.

### **Provisions as to discharge of children and young persons detained in accordance with directions of Minister**

13. (1) A person in detention pursuant to the directions of the Minister under section 12 may, at any time, be discharged by the Minister in his or her discretion on licence.
- (2) A licence may be in such form and may contain such conditions as the Minister may in his or her discretion direct.
- (3) A licence may at any time be revoked or varied by the Minister in his or her discretion and where a licence has been revoked, the person to whom the licence related shall return to such place as the Minister may in his or her discretion direct, and if he or she or she fails to do so may be apprehended without warrant and taken to that place.

### **Substitution of custody in a place of detention for imprisonment**

14. Where a child is convicted of an offence punishable, in the case of any person not being a child, with imprisonment, or would, if he or she were not a child, be liable to be imprisoned in default of payment of any fine, damages or costs, and the court considers that none of the other methods by which the case may be dealt with is suitable, the court may order that he or she be committed to custody in a place of detention for a period not exceeding 6 months.

### **Methods of dealing with children or young persons charged with offences**

15. Where a child or young person charged with any offence is tried by any court, and the court is satisfied of his or her guilt, the court shall take into consideration the manner in which, under the provisions of this or any other Act or law enabling the court to deal with the case, the case should be dealt with, and, subject to such provisions, may deal with the case in any of the following manners or combination thereof, namely-
- (a) by dismissing the case;
  - (b) by discharging the juvenile on the entering into a recognisance. with or without sureties;
  - (c) by committing the juvenile to the care of a relative or other fit person;
  - (d) by ordering the juvenile to pay a fine, damages or costs;
  - (e) by ordering the parent or guardian of the juvenile to pay a fine, damages or costs;

- (f) by ordering the parent or guardian of the juvenile to give security for his good behaviour;
- (g) by directing that the juvenile be released on entering into a bond to appear and receive sentence when called upon;
- (h) by committing the juvenile to custody in a place of detention;
- (i) where the juvenile is a young person, by sentencing him or her to imprisonment; or
- (j) by dealing with the case in any other manner in which it may be legally dealt with;

Provided that nothing in this section shall be construed as authorising the court to deal with any case in any maner in which it could not deal with the case apart from this section.

#### **Provision of places of detention**

16. (1) Such place or places of detention as may be required for the purposes of this Act shall be provided or appointed by the Minister.
- (2) If more than one place of detention is provided or appointed, the Minister may determine that any such place shall be used for some only of the purposes for which places of detention are required to be provided.
- (3) In selecting the place of detention, if there be more than one, to which a child or young person is to be committed the court shall have regard to whether the place is suitable for the reception of convicted or unconvicted persons, or of persons charged with serious or of minor offences, as the case may be, and also, where practicable, to the religious persuasion and sex of the child or young person.
- (4) A child or young person detained in a place of detention may be, by order of the Minister acting in his or her discretion, either discharged there from or transferred to some other place of detention.

#### **Provisions as to the custody of children and young persons in places of detention**

17. (1) The order or judgment in pursuance of which a child or young person is committed to custody in a place of detention provided under this Act, shall be delivered with the child or young person to the person in charge of the place of detention and shall be sufficient authority for his or her detention in that place in accordance with the tenor thereof.
- (2) A child or young person whilst so detained and whilst being conveyed to and from the place of detention shall be deemed to be in legal custody and if he or she escapes may be apprehended without warrant and brought back to the place of detention in which he or she was detained.



### **Order not be invalidated by subsequent proof of age**

18. Where a person, whether charged with an offence or not, is brought before any court and it appears to the court that he or she is a child or young person, an order or judgment of the court shall not be invalidated by any subsequent proof that the age of that person has not been correctly stated to or presumed or declared by the court, and the age presumed or declared by the court to be the age of the person so brought before it shall, for the purposes of this Act, be deemed to be the true age of that person, and where it appears to the court that the person so brought before it is of the age of 18 years or upwards, that person shall for the purposes of this Act be deemed not to be a child or young person.

### **Power to clear court**

19. In addition and without prejudice to any powers which a court may possess to hear proceedings in camera, the court may, where a person who in the opinion of the court is a child or young person is called as a witness in any proceedings in relation to an offence against, or any conduct contrary to, decency or morality, direct that all or any persons, not being members of officers of the court or parties to the case, their lawyers or authorised representatives, or persons otherwise directly concerned in the case, be excluded from the court during the taking of the evidence of the child or young person:

Provided that nothing in this section shall authorise the exclusion of bona fide representatives of any news agency or information service.

### **Power to make regulations**

20. The Minister may make regulations, as from time to time appear to him or her to be necessary, providing for the proper carrying into effect of this Act, and without prejudice to the generality of the foregoing such regulations may provide for the inspection of places of detention and for the classification, treatment, employment and control of children and young persons detained in custody in a place of detention, and for the children and young persons whilst so detained being visited from time to time by persons appointed in accordance with such regulations.

### **Saving**

21. Save in so far as other provision is expressly made in this Act nothing in this Act, shall be deemed to affect any other law relating to children or young persons.

### **Repeal of Section 26 of the Magistrates' Courts Ordinance, Cap 52**

22. Section 26 of the Magistrates' Courts Ordinance, Cap 52 dealing with young offenders is hereby repealed.

**SCHEDULE**  
**(Section 2)**

**Serious Crimes**

Murder

Attempted murder

Manslaughter

Rape

Attempted Rape

Unlawful wounding

Unlawful poisoning

Causing grievous harm

## Explanatory Memorandum

The vulnerability of children and young persons entitles a child or young person to special protection during any investigation relating to the commission or possible commission of an offence by that child or young person. The intent of the Bill is to set up a juvenile justice system that- (i) prevent crime by addressing the circumstances underlying a juvenile's offending behaviour, (ii) rehabilitate juveniles who commit offences and reintegrate them into society, and (iii) ensure that a juvenile is subject to meaningful consequences for his or her offence in order to promote the long term protection of the public.

The outline of this Act is to ensure that juveniles must be separate from that of adults and that the following be emphasized- (I) rehabilitation and reintegration, (ii) fair and proportionate accountability that is consistent with the greater dependency of juveniles and their reduced level of maturity, (iii) enhanced procedural protection to ensure that juveniles are treated fairly and that their rights, including their right to privacy, are protected, (iv) timely intervention that reinforces the link between the offending behaviour and its consequences, and (v) the promptness and speed with which persons responsible for enforcing this Act must act.

The measures to be taken against the juvenile under this Act include the following - (I) reinforce respect for societal values, (ii) encourage the repair of harm done to victims and the community, (iii) given the need and the level of development of the juvenile, to involve the parents, and those relevant agencies in the juvenile's rehabilitation and reintegration. In adopting these measures, special considerations apply in respect of proceedings against juveniles – (i) they have a right to be heard in the course of and to participate in the processes, other than the decision to prosecute, that lead to decisions that affect them as juveniles, (ii) victims should suffer the minimum degree of inconvenience as a result of their involvement with the juvenile justice system, (iii) victims should be provided with information about the proceedings and given an opportunity to participate and be heard, and (iv) parents should be informed of measures or proceedings involving their children and encouraged to support them in addressing their offending behaviour.

This small Act contains 22 sections. Section 2 defines words and phrases used in the Act. Note that the word “child” is defined as generally under 14 years of age, whereas the word “young person” is defined as between 14 and 18 years of age. The term “juvenile” means a child or a young person as defined in the Act. Section 3 enables the magistrates' courts and the High Court, not exercising its criminal jurisdiction, to sit as a juvenile court. The section provides that the court may continue the determination of a case involving a juvenile even if it is revealed during the course of the determination that a juvenile is over 18 years of age. The section also prohibits associating juveniles with adults or persons over 18 years of age. The section further provides that the juvenile court will be opened to limited number of people, like parents of a juvenile, officers of the court and the parties to the case, their lawyers or authorised representatives and those directly concerned with the case. Section 4 allows for bail by a police officer above the rank of an Inspector, or a police officer in charge of the station, if the juvenile is being apprehended and can not be brought immediately to court. If the juvenile apprehended is not released, the officer in charge of the police station to which such juvenile is brought must detain such juvenile in a place of detention until the juvenile court can deal with such juvenile. However, under section 5, the officer in charge of the same station may immediately release the juvenile before the court is able to deal with such juvenile, if it is not practicable to do so, or the juvenile is of an unruly or depraved character that it is not safe to detain such juvenile, or that by reason of health or bodily condition, it is inadvisable to detain such juvenile.

Section 6 prohibits the association of juveniles with adults in the detention centres. Section 7 empowers the court to remand the juvenile in detention or to the care or custody of any person named in the commitment, but may order otherwise if the juvenile is unfit to be remanded.

Section 8 provides a comprehensive procedure for dealing with juveniles in the juvenile court based on the principles referred to at the beginning of this memorandum, where the right of the child must be recognised as to enter a plea, or to ask witnesses questions directly or through the parents or guardians, to allow the child to give evidence, or to allow the juvenile to say anything in mitigation of the penalty to be imposed. Section 9 empowers the court to order the attendance of the parents or guardians of the juvenile to the proceedings involving such juvenile. Section 10 allows the court to impose the fine, damages or costs to be paid by the parents or guardians of the juvenile instead; or to give security for the juvenile's good behaviour. Any sums imposed on the parents or guardians of the juvenile is recoverable against those parents or guardians alike.

Section 11 clarifies that a child can not be committed to prison, unless he or she is found guilty of committing the serious crime (s) under section 12. Section 13 empowers the Minister responsible for juveniles to release those juveniles detained to be discharged on licence with or without conditions. Section 14 allows for substitution of custody in a place of detention for imprisonment.

Section 15 provides for methods the court may adopt in dealing with juveniles convicted of offences, which are not serious crimes. Such methods include, dismissing the case, discharging the juvenile on the entering into recognisance with or without sureties, committing the juvenile to the care of a relative or other fit persons, ordering the juvenile to pay a fine, damages or costs, or ordering the parents or guardians to pay the same including security for costs, or such other methods as it may legally be adopted by the courts.

Section 16 empowers the Minister responsible for juveniles to provide for or appoint places of detention. Section 17 requires that a judgement or order for committal of the juvenile be delivered the same time as the juvenile is being delivered to that place of detention. Section 18 clarifies that the order of committal of the juvenile can not be invalidated by reason of the age being subsequently proved to be an adult, in which case, that person is deemed to be not a child or a young person. Section 19 empowers the court, in certain circumstances, to order proceedings against the juvenile to be in camera.

Section 20 is the power to make regulations for the better implementation of the Act. Section 21 is a saving provision. And section 23 repeals section 26 of the Magistrates' Ordinance dealing with young offenders.

Titabu Tabane  
Attorney General

**CERTIFICATE OF THE CLERK OF THE MANEABA NI MAUNGATABU**

This printed impression of the Juvenile Justice Act 2015 has been carefully examined by me with the Bill which passed the Maneaba ni Maungatabu on the 17<sup>th</sup> August 2015 and is found by me to be a true and correctly printed copy of the said Bill.

  
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**Eni Tekanene**  
**Clerk of the Maneaba ni Maungatabu**

**CERTIFICATE OF THE SPEAKER OF THE MANEABA NI MAUNGATABU**

I certify that the above Act was on the 17<sup>th</sup> August 2015 passed by the Maneaba ni Maungatabu on a Certificate of Urgency under section 68(3)(a) of the Constitution.

  
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**Hon. Taomati Iuta**  
**Speaker of the Maneaba ni Maungatabu**

Published by exhibition at the Maneaba ni Maungatabu this 24 day of DECEMBER 2015.

  
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**Eni Tekanene**  
**Clerk of the Maneaba ni Maungatabu**