

ANTIGUA AND BARBUDA



**THE MAINTENANCE OF AND ACCESS TO CHILDREN ACT, 2008**

No. of 2008



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made to section 124 of Cap. 48 which, when the laws were revised, became section 126 of Cap. 255 which is now The Magistrate’s Code of Procedure Act. The discrepancy in the numbering of the sections is addressed by section 20 of The Law Revision Act, Cap. 255 of the Laws of Antigua and Barbuda.)

**AN ACT** to provide for the maintenance of and access to children and for incidental and connected purposes.

**ENACTED** by the Parliament of Antigua and Barbuda as follows:

**1. Short title**

This Act may be cited as the Maintenance of and Access to Children Act, 2008 and comes into operation on the date that the Minister may, by Notice published in the Gazette, appoint.

**2. Interpretation**

In this Act—

“access” means the opportunity to participate in the upbringing of a child and to regularly visit with that child;

“attachment order” means an order to have funds for the maintenance of a child deducted from the emoluments of a person so that they may be utilized according to the terms of a maintenance order;

“child” means—

- (a) a person under the age of 18 years whether born in or out of wedlock and includes a child adopted in a manner recognised by law;
- (b) a person 18 years and older whose special circumstances are such that he is unable to reasonably provide for his daily requirements; or
- (c) a person 18 years of age or older but under the age of 25 years who is receiving education at an educational institution or undergoing training for a trade, profession or vocation, whether or not he is employed;

“Commissioner” means the Commissioner of Police of the Royal Police Force of Antigua and Barbuda;

- Clause 15.** Permits the court to summon a person in default of an order to remedy the order or to issue a warrant for the arrest of a person who ignores the summons.
- Clause 16.** Makes provision for committal.
- Clause 17.** Makes provision for the manner in which warrants issued pursuant to sections 14, 15 and 16 are to be executed.
- Clause 18.** Permits the court to make an order for attachment to collect funds for maintenance. It would also provide for a penal notice to be attached to an order and for persons processing these orders to behave their expenses reimbursed. It would also provide that persons who do not deduct funds in compliance with attachment orders, will be personally liable for the payments that should have been made into the Maintenance Collection Account.
- Clause 19.** Makes provision for the application of attachment orders and what must information must be provided in support of that application.
- Clause 20.** Makes provision for the duration of maintenance orders.
- Clause 21.** Provides that no arrears accrue with respect to funds ordered to be paid pursuant to a maintenance order of the person ordered to pay those funds is incarcerated.
- Clause 22.** Makes provisions to deal with persons attempting to leave Antigua and Barbuda without having complied with a maintenance order or trying to remove a child from the jurisdiction to frustrate an order of the court.
- Clause 23.** Provides the court with the power to make an order if a person contravened clause 20.
- Clause 24.** Provides a penalty for a person who commits an offence under clause 21.
- Clause 25.** Makes provision for the arrest of a person by a police officer who is not in possession of a warrant.
- Clause 26.** Makes provision for the misapplication of funds for maintenance.
- Clause 27.** Preserves the jurisdiction of the High Court in maintenance and access matters.
- Clause 28.** Makes provision for the Minister to make regulations.
- Clause 29.** Makes provision for the Minister to appoint persons for the operation of the Act.
- Clause 30.** Makes provision for appeal against orders made under the Act.
- Clause 31.** Repeals the Maintenance of Children Act, Cap. 256 and certain sections of the Magistrates Code of Procedure Act, Cap. 255.

(The amendment to section 126 of the Magistrate’s Code of Procedure Act, Cap. 255 is an amendment to an amendment of The Magistrate’s Code of Procedure Act when it was still Cap. 48. This amendment was made in section 5 of No. 3 of 1993, the Magistrate’s Code of Procedure (Amendment) Act, 1993. That amendment was

- “court” except in section 27 means the Magistrate’s Court;
- “DPP” means the Director of Public Prosecutions;
- “maintenance” means the financial and other support services necessary to provide for the needs and upbringing of a child and includes all sums payable for the benefit of the child pursuant to an order of the court;
- “maintenance order” means an order made pursuant to this Act for the maintenance of a child;
- “Minister” means the Minister with responsibility for the administration of the courts;
- “order” means an order made pursuant to this Act;
- “parent” means the mother or father of a child and includes a person who has legally adopted that child;
- “respondent” means the person against whom an application is made.

**3. Obligation to maintain and protect child and access to a child**

- (1) The parents of an unmarried child shall maintain that child.
- (2) The parents of a child, or a person who assumes responsibility for a child, shall ensure as far as possible that the child is protected from all forms of neglect, abuse and exploitation and any person who contravenes this subsection is liable to be prosecuted pursuant to section 5 of the Juvenile Act, Cap. 229.
- (3) Where a person who is not the parent of a child assumes responsibility for the child, that person shall maintain the child, but this obligation is secondary to that of the parents of the child.
- (4) A person assumes responsibility for a child where—
  - (a) he marries one of the parents of the child and the child resides with him and the parent that he marries; or
  - (b) he has custody of, or is the guardian of a child, whether by order of the court or otherwise and whether permanently or temporarily.
- (5) Subsection to section 9(2), each parent of a child and a person who has assumed responsibility for a child pursuant to subsection (4), is entitled to have access to that child.

**4. Court shall deal with access and maintenance together**

- (1) Where an application for an order for maintenance is being heard, the court shall also deal with the issue of access to the child for whose benefit the application was made.
- (2) Where an application for an order for access is being heard, the court shall also deal with the issue of maintenance of the child for whose benefit the application was made.

**5. Court orders**

Where an application is made pursuant to this Act the court—

- (a) shall give consideration to all relevant factors;
- (b) may engage any person who, or any agency which, in the opinion of the court, is capable of providing the knowledge or expertise necessary to assist the court in determining the matter; and
- (c) shall make any order in the best interest of a child regarding the maintenance of or access to the child.

**6. Application for order**

(1) An application made pursuant to this Act shall be made in the form prescribed by Regulations.

(2) Any parent, or person who assumes responsibility for a child in accordance with section 3(4), may make an application for any order provided for under this Act, including a maintenance or access order or for the suspension, revival, variation or discharge of an order.

(3) A person who makes an application for an order under subsection (1) shall file together with the application—

- (a) the birth certificate of the child for whose benefit the application is being made;
- (b) a statement of the expenses of that child with supporting documents;
- (c) a statement of his income and expenses with supporting documents;
- (d) a marriage certificate if the parties to the application are married;
- (e) the custody order if such an order was previously made by any court in respect of the child for whose benefit the application is being made;
- (f) the guardianship agreement pertaining to the child if applicable; and
- (g) any other existing order with respect to the child.

(4) Where an application for an order is being heard, the court may determine any issues regarding a child before making an appropriate order.

**7. False statements**

(1) A person shall not submit false information in support of any application made pursuant to this Act.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of one thousand dollars.

(3) Where on hearing an application made pursuant to this Act, the court determines that any information submitted in support of an application, or in pursuance of any order made pursuant to this Act is false the court may—

- (a) dismiss the application; or
- (b) order a person to resubmit the information with supporting documentation.

**EXPLANATORY MEMORANDUM**

This Bill seeks improve the way in which maintenance applications and related issues are dealt with by the court and to ensure that both parents of every child have access to that child in order to participate the child’s upbringing.

**Clause 1.** States the short title of the Act.

**Clause 2.** Provides definitions for certain words and terms used within the Act.

**Clause 3.** States the obligations of the parents of a child and that both parents of a child are entitled to have access to that child.

**Clause 4.** Makes provision for the court to deal with both maintenance, access issues together.

**Clause 5.** Gives the court a wide jurisdiction to consider many matters and to seek expert assistance in determining the matter being heard and to make any order in the best interest of the child.

**Clause 6.** States who can make an application under the Act, when certain applications can be made what information must support the application for a maintenance order.

**Clause 7.** Makes provision for the court to deal with false information provided by parties to an application.

**Clause 8.** Outlines what the court must consider when hearing an application made pursuant to the Act.

**Clause 9.** Sets out what the court must be assured of before making any order.

**Clause 10.** Gives the court the jurisdiction to vary an order or make an interim order and outline the types of orders that the court may make including an order to suspend a benefit enjoyed by person until an order of the court is complied with. This clause would also provide that certain orders are to be copied to the Chief Immigrations Officer.

**Clause 11.** Makes provision for the court to parties to try to settle the matter.

**Clause 12.** Makes provision for the establishment of a Maintenance Collection Account to deal solely with the collection and payment of funds for maintenance and no funds can be paid from the account without the joint authorisation of the Chief Clerk and a Magistrate or a Senior Executive Officer and a Magistrate. This clause would also provide for the transfer of funds already collected for maintenance and currently held in the Consolidated Fund or another account before the enactment of the Act to be transferred to the Maintenance Collection Account.

**Clause 13.** Makes provision for alternate methods of paying funds for maintenance.

**Clause 14.** Provides the penalty for contravening an order under the Act.

- (b) the manner in which payments are to be made from the Maintenance Collection Account;
- (c) the commencement of proceedings against persons in default of maintenance orders;
- (d) the payment of funds from the Maintenance Collection Account;
- (e) the application of interest earned from funds in the Maintenance Collection Account;
- (f) the forms necessary for carrying into effect the provisions of this Act;
- (g) the manner in which matters are to be—
  - (i) referred to mediation pursuant to this Act; and
  - (ii) conducted when referred to mediation pursuant to this Act; and
- (h) the effective carrying out of the provisions of this Act.

**29. Appointments by the Minister**

(1) The Minister may by order appoint the Chief Welfare Officer or any person he thinks fit to commence any proceedings pursuant to this Act.

(2) A person appointed by the Minister under section (1) is not required to file the documents set out at section 6(3)(c), (d), (e) and (f).

(3) Where an applicant is a person appointed by the Minister under subsection(1), section 8(1)(d), (e), (f), (g) and (h) do not apply to the applicant.

**30. Appeal**

A person may appeal to the Court of Appeal against an order.

**31. Repeal**

- (1) The Maintenance of Children Act, Cap. 256 is repealed.
- (2) The Magistrate’s Code of Procedure Act, Cap. 255 is amended as follows—
  - (a) in section 121 by repealing paragraphs (4)(c), (d) and (e) and(7)(ii);
  - (b) by repealing section 123;
  - (c) by repealing section 126(1)(b) and (2); and
  - (d) by repealing sections 128, 131 and 134.

Passed the House of Representatives on the \_\_\_\_\_, 2008. Passed the Senate on the \_\_\_\_\_, 2008.

*Speaker.*

*President.*

*Clerk to the House of Representatives.*

*Clerk to the Senate.*

**8. Court to consider child’s best interest**

(1) When hearing an application for an order the court shall consider the best interest of the child in all the circumstances and may give due regard to—

- (a) the financial requirements of a child;
- (b) any other particular requirements that a child may have by virtue of any disability or special circumstance;
- (c) the educational requirements and expenses of a child;
- (d) the standard of living of the child, the applicant and the respondent;
- (e) the income, earning capacity, property and other financial resources of both the applicant and the respondent;
- (f) the financial requirements, obligations and responsibilities of both the applicant and the respondent;
- (g) whether there are other children to be maintained by the applicant or the respondent;
- (h) the relationship between the parties to the application and the child for whose benefit the application is being made and the effect of that relationship on the child; and
- (i) any other matters that the court considers just and equitable.

(2) Where the court is required to make an access order pertaining to a child who is 13 years of age or older and it appears necessary to the Court that it hear evidence from the child regarding his relationship with the parties in the matter, the court shall adjourn the matter and hear the evidence of the child in chambers.

**9. Court to be satisfied**

(1) Before making a maintenance order the court shall be satisfied that—

- (a) a child for whose benefit the application is being made is entitled pursuant to this Act to be maintained by the respondent;
- (b) the respondent who is able to maintain the child has failed to fulfil that obligation; and
- (c) the needs of the child will be adequately met.

(2) Before making an order for access to a child, the court shall be satisfied that the person in whose favour the order is to be made is entitled to have access to the child and that access to the child by that person would be in the best interest of the child.

**10. Powers of court**

(1) A court may make any order in favour of a child for payment for services including but not limited to the provision of—

- (a) food;
- (b) clothing;
- (c) medical attention and medication;
- (d) school attire;

- (e) school fees;
- (f) school texts;
- (g) school stationery; and
- (h) insurance benefits.

(2) A court may make any interim or final order requiring that—

- (a) an amount be paid periodically whether for an indefinite or limited period, or until the happening of a specified event;
- (b) a lump sum be paid or held in trust;
- (c) some or all of the money payable under the order be paid to an appropriate person or agency for the child's benefit;
- (d) payment be made in respect of any period before the date of the order;
- (e) any licence, permit or benefit enjoyed by a respondent be suspended until he satisfies the requirements of the order of the court;
- (f) payment of expenses in respect of a child's birth and the prenatal care of the child's mother be made by the respondent;
- (g) distress be levied upon the goods or chattels of the respondent for the satisfaction of a maintenance order;
- (h) funds for the maintenance of the child be paid into an account held in the child's name or to a specific person;
- (i) the respondent who has an interest in a pension plan or other benefit plan, designate the child as beneficiary under the plan and not change that designation;
- (j) payment under a maintenance order be secured by lien or charge on real or personal property or otherwise; and
- (k) any other order that the court thinks fit in the circumstances of the case.

(3) A court may vary an order in any manner that the court thinks fit, suspend that order, revive a suspended order or discharge an order.

(4) A maintenance order binds the estate of the respondent unless the order provides otherwise.

(5) Where the court has determined that a person is in default of a maintenance order and the court makes a further order for the committal of that person or any further order in respect of that person, the court shall forward a copy of that order to the Chief Immigration Officer.

(6) The court may, on application, make an interim or final order restraining the depletion of a person's property that would impair or defeat an order.

(7) When hearing an application for a maintenance order or for the variation of a maintenance order, the court may order the employer of an applicant or the respondent to make a written return to the court showing the person's basic wage and the person's emoluments during the preceding twelve months.

(8) The court, upon hearing any application made pursuant to this Act, if satisfied that a person has contravened section 3(2), may refer the matter to the DPP for prosecution.

## **25. Power to arrest without warrant**

(1) A police officer may, where he is provided with sworn information, arrest without warrant and shall on the next working day after the arrest, bring before a Magistrate, a person who—

- (a) is in default of a maintenance order and who is attempting to leave Antigua and Barbuda; or
- (b) is attempting to remove a child from Antigua and Barbuda in contravention of a court order.

(2) The Chief Immigration Officer or any Immigration Officer on duty at a port of entry may, where he is provided with sworn information, arrest without warrant and shall within 24 hours of the arrest place in the custody of the police, a person who—

- (a) is in default of a maintenance order and who is attempting to leave Antigua and Barbuda; or
- (b) is attempting to remove a child from Antigua and Barbuda in contravention of a court order.

(3) The Commissioner shall ensure that a person who has been placed in police custody in accordance with subsection (2) is brought before a court or on the next working day after being placed in police custody.

## **26. Misapplying funds**

(1) A person who has received funds for the maintenance of a child shall apply those funds for that purpose.

(2) A person who contravenes subsection (1)—

- (a) commits an offence and is liable on summary conviction to a fine of one thousand dollars or to a term of imprisonment of 6 weeks or both; and
- (b) shall repay the misapplied funds.

## **27. High Court**

Nothing in this Act prevents the High Court from—

- (a) making a maintenance order or any other incidental order where any matter is being considered by that Court that relates to the maintenance or welfare of a child; or
- (b) making an interim or final order restraining the depletion of a person's property that would impair or defeat the operation of a maintenance order.

## **28. Regulations**

The Minister may make Regulations to provide for—

- (a) the opening and operation of the Maintenance Collection Account;

- (a) is attempting to remove a child from Antigua and Barbuda to frustrate an order regarding the access to or custody of that child;
- (b) does not have the permission of both the parents of the child to remove the child from Antigua and Barbuda, where the parents of the child share custody of the child; or
- (c) does not have the permission of the parent who has custody of the child to remove the child from Antigua and Barbuda, where that parent has sole custody of the child.

(3) For the purposes of subsections (1) and (2) a court may, either in the first instance or subsequent to the issue of a summons, issue a warrant addressed to the Commissioner and to all police officers, to apprehend a person and cause him to be brought before the court within 24 hours of the apprehension.

### **23. Power of the court to prohibit a person from leaving Antigua and Barbuda or from removing a child**

(1) The court may order a person not to leave Antigua and Barbuda where on the appearance of the person, the court is satisfied that the person is about to leave Antigua and Barbuda without having made adequate provision for the maintenance of a child during his absence.

(2) The court may order a person not to remove a child from Antigua and Barbuda where on the appearance of the person, the court is satisfied that the person is about to leave Antigua and Barbuda with a child—

- (a) in order to frustrate an order regarding access to the child;
- (b) without the permission of both of the parents of the child where the parents of that child share custody of the child; or
- (c) without the permission of a parent who has custody of the child where that parent has sole custody of the child.

(3) Before making an order to prohibit a person from removing a child from Antigua and Barbuda, the court shall consider whether the child is being removed from Antigua and Barbuda for educational or medical purposes or for another good and sufficient reason.

### **24. Contravention of order**

A person commits an offence and on summary conviction is liable to a fine of two thousand dollars or to be imprisoned for a period of six months or both, if an order has been made against him under section 23 and—

- (a) he leaves or attempts to leave Antigua and Barbuda while the order is in force; or
- (b) he removes or attempts to remove the child from Antigua and Barbuda while the order is in force.

(9) Where the issue of paternity of a child arises during the hearing of any application made pursuant to this Act, the court may, after considering the evidence of the parties, make an order that tests be made to confirm the paternity of the child and shall, where the tests so confirm, declare the paternity of the child and make an appropriate order as to the maintenance of the child.

### **11. Mediation**

(1) A court may refer any proceedings commenced pursuant to this Act to mediation.

(2) Parties may notify the court that they wish to have their matter referred to mediation and upon receipt of this notification the court shall make an order referring the matter to mediation.

(3) Where an order is made pursuant to subsection (1) or (2) and the parties referred to mediation reach an agreement, the mediator shall reduce the agreement into writing in the prescribed form and the parties shall sign the agreement.

(4) Where an agreement has been concluded pursuant to subsection (3), the applicant shall file the agreement with the court and within fourteen days of the date of filing the agreement, the court shall fix a date for further hearing of the matter and make an order in terms of the agreement.

### **12. Maintenance Collection Account**

(1) Unless otherwise ordered by the court, all funds to be paid pursuant to a maintenance order shall be paid at the Magistrates Court—

- (a) in cash;
- (b) by a cashier's cheque or by a bankers draft; or
- (c) by standing order.

(2) All funds paid pursuant to a maintenance order shall be paid into a trust account to be known as the Maintenance Collection Account, which shall be for the sole purpose of collecting and paying those funds.

(3) On a date to be specified by the Minister all funds held pursuant to maintenance orders in the Consolidated Fund or at the Magistrates Court prior to the commencement of this Act shall be deposited into the Maintenance Collection Account.

### **13. Alternate payment methods**

The court may make further orders as it thinks fit, specifying the manner in which funds are to be paid for maintenance.

### **14. Contravention of access orders**

(1) A person may make an application to the court for an order that a person who has contravened an access order be committed for contravening that order.

(2) Where an application is made pursuant to subsection (1) the court shall issue a warrant addressed to the Commissioner and to all police officers, that the person who contravened the

access order be arrested and brought before the court to show cause why he should not be committed for being in contravention of the order.

(3) A person who is arrested pursuant to subsection (2) who cannot show cause to the satisfaction of the court why he contravened the court's order, is liable to be committed for a period of 6 weeks.

#### **15. Contravention of maintenance orders**

(1) A person may make an application to the court, on behalf of a child for whose benefit a maintenance order has been made, for an order that a person in default of the maintenance order be committed for being in default of that order.

(2) Where an application is made pursuant to subsection (1) the court shall issue a warrant addressed to the Commissioner and to all police officers, that the person who contravened the maintenance order be arrested and brought before the court to show cause why he should not be committed for being in contravention of the order.

(3) A person who is arrested pursuant to subsection (2) who cannot show cause to the satisfaction of the court why he contravened the court's order, is liable to be committed for a period of 6 weeks.

#### **16. Contravention of order**

A person who is in default of or contravenes an order, commits an offence and is liable on summary conviction to a fine of two thousand dollars or to be committed for a period of two years or to both.

#### **17. Execution of warrants**

(1) Where the court issues a warrant pursuant to sections 14 or 15, the court shall forward the warrant to the Commissioner for execution.

(2) The Commissioner shall ensure, as far as possible, that a warrant issued pursuant to this section is promptly served and executed in accordance with the directions of the court.

#### **18. Attachment order**

(1) The court may make an attachment order in respect of any pension or income that is capable of being attached, directing the person paying the pension or income to periodically deduct a sum for maintenance and to pay that sum into the Magistrates Court.

(2) An attachment order made pursuant to subsection (1) must contain a penal notice notifying the person ordered to make the deduction and subsequent payment that he will be personally liable for the payment if he fails to make the deduction in compliance with the attachment order.

(3) A person ordered to make payments pursuant to an attachment order shall notify the court of any change of circumstance that affects the payment of any pension or income that is the subject of an attachment order, within 14 clear days of that change.

(4) If a person fails to notify the court in accordance with subsection (3), he is personally liable to make the payments ordered pursuant to this section until he complies with subsection (3).

#### **19. Application for order of attachment**

A person may apply to the court for an attachment order in respect of the income of a person who is in default of a maintenance order.

#### **20. Duration of orders**

(1) The court may order that a maintenance order remain in force—

- (a) until the child attains the age of eighteen years;
- (b) until the child has completed tertiary education;
- (c) until the child reaches a specified age;
- (d) for the period specified in the order; or
- (e) where a child is unable to maintain himself by reason of illness or infirmity which is likely to be permanent, for the rest of the natural life of that child.

(2) A maintenance order remains in force until it is satisfied, varied or revoked by the court.

(3) An access order remains in force until a child in respect of the whom the order is made attains the age of eighteen years unless the court otherwise orders.

#### **21. Arrears during period of committal**

Where a person is committed to prison for breach of a maintenance order, no arrears accrue under the order during the time that the person is in prison, unless the court otherwise directs.

#### **22. Summons for a person attempting to leave Antigua and Barbuda**

(1) A court may issue a summons requiring a person to appear at a specified time, to show cause why an order should not be made against him prohibiting him from leaving Antigua and Barbuda where the court is satisfied upon oath that there is reasonable ground for believing that the person is about to leave Antigua and Barbuda without making adequate provision during his absence for the maintenance of a child that lives in Antigua and Barbuda.

(2) A court may issue a summons requiring a person who was attempting to remove a child from Antigua and Barbuda to appear at a specified time, to show cause why an order should not be made against him prohibiting him from leaving Antigua and Barbuda with the child, or prohibiting him from having a child removed from Antigua and Barbuda, where the court is satisfied upon oath that there is reasonable ground for believing that the person—