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THE OFFICIAL GAZETTE 18TH JULY, 2022
LEGAL SUPPLEMENT — C

BILL No. 13 of 2022

Monday 18th July, 2022

PARLIAMENT OFFICE
Public Buildings,
Georgetown,
Guyana.

18th July, 2022.

The following Bill which will be introduced in the National Assembly is published for general information.

S.E. Isaacs,
Clerk of the National Assembly.

GUYANA

BILL No. 13 of 2022

RESTORATIVE JUSTICE BILL 2022

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A BILL

Intituled

AN ACT to provide for the use of restorative justice in the criminal justice system for victims, offenders and the community, the establishment of the Advisory Council on Restorative Justice and for related matters.

A.D. 2022 Enacted by the Parliament of Guyana:-

PART I
PRELIMINARY

Short title and commencement.

1. This Act may be cited as the Restorative Justice Act 2022 and shall come into operation on such day as the Minister may, by order, appoint.

Interpretation.

2. In this Act-

"agreement" means the restorative justice agreement;

"child victim" means a victim who is under the age of eighteen years;

"conference" means a restorative justice conference;

"Convenor" means a person as an approved convenor appointed under section 25;

"Council" means the Advisory Council on Restorative Justice established under section 18;

"court" means any court exercising jurisdiction in criminal cases;

"Director" means the Director of Restorative Justice appointed under section 11;

"guardian" includes any person who has for the time being the charge of, or control over, a victim or offender;

"immediate family member" means in relation to a victim, that person's-

(a) spouse;

(b) child;

(c) sibling;

(d) parent;

(e) grandparent; or

(f) any other person who the court determines to be sufficient proximate relationship, whether blood or otherwise, to be considered a member of the person's immediate family;

"Minister" means the Minister responsible for legal affairs;

"offender" means a convicted person or a person who has formally admitted to the commission of a criminal offence and includes a person who is alleged to have committed an offence;

"participant" means a victim, offender, parent or any other person who participates in restorative justice and includes a substitute participant;

"referring entity" means the Director of Public Prosecutions and a court of competent jurisdiction;

"restorative justice" means an approach to addressing unlawful conduct outside the traditional criminal prosecution proceedings that involves one or both of the following-

(a) providing an opportunity for the offender and the victim of the unlawful conduct or other community representatives to seek a resolution that repairs the harm caused by the unlawful conduct and allows the offender to make amends to the victim or the wider community; or

(b) requiring the offender to obtain treatment or counselling to address underlying mental health conditions, addictions or other behavioural issues;

"restorative justice process" means any process in which the victim, the offender or any other individual affected by the offence actively participate together in the resolution of matters arising from the offence;

"restorative justice programme" means any programme that uses restorative justice processes or aims to achieve an agreement;

"victim" means a person against whom the offence concerned is committed or who suffers physical or psychological injury, or loss or damage to property; and includes-

(a) a parent or guardian of a child victim, who suffers the physical or psychological injury, loss or damage to property; or

(b) a person who is financially or psychologically dependent on the victim and who suffers harm because of the harm caused to the victim.

OBJECTIVES AND UNDERLYING PRINCIPLES

Objectives of the Act.

3. The objectives of this Act are to-

(a) support the development and usage of restorative justice in Guyana;

(b) set up a system of restorative justice that brings together community residents, victims, offenders, and their personal representatives in a permissive, safe, and carefully managed environment;

(c) effect repair in communities that have been damaged by criminal acts or where criminal acts occur;

(d) provide and promote a sufficient range of sentences and other means of dealing with offenders outside of the traditional sentencing processes;

(e) aid in the public's understanding of sentencing practices, by providing principles and guidelines to be applied by courts in sentencing or otherwise dealing with offenders;

(f) provide for the interests of victims and to ensure that their interests are given high priority in the administration of restorative justice under this Act;

(g) enhance the rights of victims by providing restorative justice as a way of empowering victims to make decisions about how to repair the harm done by offenders;

(h) enable access to restorative justice at every stage of the criminal justice procedure without substituting the criminal justice system for restorative justice or changing the normal process of criminal justice; and

(i) reduce recidivism and the risk of more serious crimes in the future that may require a more intensive and costly response from the legal system, such as prosecution and incarceration.

Underlying principles of restorative justice.

4. The principles underlying restorative justice are as follows-

(a) the primary aim of restorative justice is to address and repair harm;

(b) participation in restorative justice is voluntary and based on informed choice;

(c) restorative justice shall be fair and unbiased towards participants;

(d) the procedures and practices of restorative justice shall aim to ensure the safety of all participants and create a safe space for the expression of feelings and views about the harm that has been caused;

(e) restorative justice shall be non-discriminatory and available to all persons affected by conflict and harm; and

(f) restorative justice shall be respectful to the dignity of all participants and those affected by the harm caused.

No obligation to participate.

5. No person shall be obligated to take part in restorative justice or continue to take part in restorative justice after it has started.

Steps to repair harm caused.

6. When an offender participates in restorative justice, the offender may be required to take steps to repair the harm caused by the offender's unlawful conduct or to prevent future unlawful conduct, such as-

(a) apologising to the victim or other affected members of the community;

(b) participating in mediation or reconciliation;

(c) paying restitution to the victim;

(d) engaging in community service work; or

(e) participating in any rehabilitation, counselling, education or treatment programmes.

PART II

ELIGIBILITY FOR RESTORATIVE JUSTICE

Timing of restorative justice.

7. Subject to section 14(2), restorative justice may be utilised before or after a person is charged with any offence even if the offence was committed before the commencement of this Act.

Eligible victims.

8. (1) A victim is eligible for restorative justice in relation to the offence if-

(a) the victim is at least twelve years old; and

(b) the victim is capable of agreeing to take part in restorative justice.

(2) Where the victim is younger than twelve years old, an immediate family member of the victim is eligible for restorative justice in relation to the offence if-

(a) the immediate family member is at least eighteen years old; and

(b) the immediate family member is capable of agreeing to take part in restorative justice.

Parent of child victim eligible for restorative justice.

9. A parent of a child victim is eligible for restorative justice in relation to the offence if-

(a) the child victim is incapable of adequately understanding or responding to the experience of the offence, or has died; and

(b) the parent is capable of agreeing to take part in restorative justice.

Eligible offenders.

10. (1) An offender is eligible for restorative justice if the offender-

(a) accepts responsibility for the commission of the offence;

(b) was at least fourteen years old when the offence was committed, or was allegedly committed; and

(c) is capable of agreeing to take part in restorative justice.

(2) An offender who accepts responsibility for the commission of an offence and decides to take part in restorative justice is not prevented from pleading not guilty to that offence.

(3) The court is not required to reduce the severity of any sentence it may make for the offender, where that offender has accepted responsibility for the commission of an offence and agrees to take part in restorative justice.

No. 8 of 2018

(4) Where the offender is a juvenile, as defined in the Juvenile Justice Act, the principles and measures relating to the juvenile justice system and diversion shall apply to eligible offenders under this Act.

PART III

DIRECTOR OF RESTORATIVE JUSTICE

Director of Restorative Justice.

11. (1) The Minister shall appoint a Director of Restorative Justice who shall manage and organise restorative justice programmes and supervise persons who participate in those programmes.

(2) In addition to subsection (1), the functions and duties of the Director shall be to-

(a) ensure the efficient, effective and coordinated delivery of services to persons referred to a restorative justice programme;

(b) determine the location where a restorative justice programme is to take place;

(c) upon the outcome of the restorative justice process, give a report detailing the outcome of the restorative justice process to the relevant reporting entity;

(d) design suitable restorative justice programmes for participants that assist in the offender's reformation and reintegration in the community;

(e) advise the Minister on policies and procedures related to restorative justice and carry out those policies and procedures;

(f) liaise with the court in relation to the level and nature of restorative justice programmes available to persons;

(g) receive, analyse and process restorative justice referrals;

(h) coordinate referred cases from intake through contract completion, including matching cases with convenors and scheduling conferences;

(i) establish and maintain a restorative justice database of all the restorative justice programmes executed in Guyana which shall be kept confidential;

(j) liaising with stakeholders including community members to promote awareness of restorative justice and identify opportunities to engage persons in restorative justice;

(k) assist with training;

(l) develop and maintain in collaboration with the Director of Juvenile Justice, Chief Probation Officer and any other relevant governmental or non-governmental organisation, programmes to facilitate the rehabilitation and reintegration of persons into the community; and

(m) perform any other functions assigned by this Act or the Minister.

PART IV

REFERRAL FOR RESTORATIVE JUSTICE

Referral procedure.

12. (1) The referring entity shall, in writing to the Director, request that the offender participate in a restorative justice programme.

(2) The request shall state the grounds for the referral and where the referring entity is a court, the referral may be in the form of a court referral order or sentence-related order, or as a condition of bail.

Referral by the Director of Public Prosecutions.

13. The Director of Public Prosecutions may, before recommending a charge, refer an offender to a restorative justice programme -

(a) having regard to the factors set out in section 16;

(b) if the person charged consents, as evidenced by signing a completed Form 1 of the Third Schedule, to participate in a restorative justice programme;

Form 1 Third Schedule.

(c) if the victim of the offence consents, as evidenced by signing a completed Form 2 of the Third Schedule, to participate in a restorative justice programme; and

Form 2 Third Schedule.

(d) where the relevant offence is not one listed in the Second Schedule.

Second Schedule

Referral by the court.

14. (1) Before commencing the trial of a person for an offence listed in the First Schedule, the court may, of its own motion or on the recommendation of the prosecutor or the lawyer representing the offender, determine that it is appropriate to make an order referring the matter to a restorative justice programme-

First Schedule.

(a) having regard to all the circumstances and, in particular, the factors set out in section 16;

(b) if the person charged consents, as evidenced by signing a completed Form 1 of the Third Schedule, to participate in a restorative justice programme; and

Form 1 Third Schedule.

(c) if the victim of the offence consents, as evidenced by signing Form 2 of the Third Schedule, to participate in a restorative justice programme.

Form 2

Third Schedule.

(2) Where the trial of an offence not listed in the First Schedule or the Second Schedule has commenced in respect of a person, and has resulted in that person's conviction, the court may, before sentence is passed, determine that it is appropriate to make an order referring the matter to a restorative justice programme and paragraphs (a), (b) and (c) of subsection (1) shall apply *mutatis mutandis* to this subsection.

First Schedule.
Second Schedule.

(3) The court shall give a copy of the court referral order to-

(a) the victim;

(b) the parent of the child victim;

(c) the offender;

(d) the Director of Public Prosecutions and any lawyer representing the offender; and

(e) the Director.

(4) Where the offence is an offence listed in the First Schedule, the court may make a court referral order, before the offender pleads guilty to the offence or is found guilty of the offence.

(5) Where a restorative justice order is made under this section, the trial of the offence shall not commence unless the court has made the determination referred to in section 35(1).

(6) A restorative justice order made after conviction but before sentencing shall operate as an adjournment of the trial of the offence and the trial shall not resume unless the court has made the determination referred to in section 35(2).

(7) A restorative justice order made under this section shall specify the time within which the restorative justice process shall be concluded.

Director to give written report to referring entity.

15. (1) The Director shall give the referring entity a written report, including a copy of the restorative justice agreement, within a reasonable time, about the outcome of the restorative justice process for the offence.

(2) The report shall include a statement of the following in relation to each person who is a victim or a parent of a child victim and the offender-

(a) whether a restorative justice conference was held;

(b) if a restorative justice conference was held-

(i) the extent to which the conference met the objectives of this Act; and

(ii) whether a restorative justice agreement was reached.

(3) If a restorative justice agreement was reached, the report shall include a copy of the agreement.

(4) In addition to subsection (1), the Director shall give a copy of the report to-

(a) the victim or a parent of a child victim;

(b) the offender; and

(c) the lawyer representing the offender.

Factors to consider before making a referral for restorative justice.

16. A referring entity shall, before referring a matter to a restorative justice programme, consider the following factors-

(a) whether a restorative justice programme exists and arrangements can be made for the participation by the parties in the programme;

(b) the possible benefits to be derived, by the offender and the victim from the restorative justice process;

(c) the risk that the offender may pose to the community;

(d) where the victim is a child or a person who is incapable of giving consent for the purposes of sections 13 and 14, the best interests of the child or person; and

(e) any matter which in the opinion of the referring entity would make participation in a restorative justice programme inappropriate in the circumstances.

Where victim or offender is under the age of eighteen years, etc.

17. (1) In any case where a victim or an offender is-

(a) under the age of eighteen years, consent for the purposes of this Act may be given by the parents or guardian of the victim or offender as the case may be;

(b) a person who has attained the age of eighteen years, and who the court is satisfied is unable to give consent for the purposes of this Act by reason of any physical, intellectual or mental impairment, that consent may be given by a member of the person's immediate family who has attained the age of eighteen years; or

(c) deceased, consent may be given by a member of the person's immediate family who has attained the age of eighteen years.

(2) Where a person has given consent on behalf of the victim under this section, that person shall be entitled to participate as a party in the restorative justice process.

PART V

ADVISORY COUNCIL ON RESTORATIVE JUSTICE

Advisory Council on Restorative Justice.

18. (1) There is established a council to be known as the Advisory Council on Restorative Justice.

(2) The Council shall comprise the following members –

(a) the Minister, who shall be the Chairperson;

(b) the Director;

(c) the Director of Public Prosecutions;

(d) the Commissioner of Police;

(e) the Director of the Childcare and Protection Agency;

(f) the Chief Probation Officer;

(g) a representative of the Judiciary, appointed by the Chancellor;

(h) the Director of Juvenile Justice; and

(i) two other persons appointed by the Minister who have experience –

(i) in the practice and delivery of restorative justice; and

(ii) in providing social services or delivering counselling or treatment programmes.

(3) The members of the Council appointed by the Chancellor and the Minister shall be appointed for a term of three years and shall be eligible for re-appointment.

(4) A member of the Council may appoint a member of the member's staff of suitable seniority to act as the member's alternate and to attend meetings of the Council on behalf of the member.

Role of the Council.

19. The Council shall monitor the effectiveness of restorative justice programmes and provide advice and recommendations to the Minister on-

(a) the design and content of restorative justice programmes;

(b) the most effective means of implementing and delivering restorative justice programmes;

(d) policies respecting restorative justice programmes;

(e) the accreditation of groups providing restorative justice; and

(f) any other matter that promotes the effectiveness and efficiency of restorative justice in Guyana.

PART VI

SUITABILITY FOR RESTORATIVE JUSTICE

Suitability of an offence for restorative justice.

20. In deciding whether restorative justice is suitable for a particular offence, the referring entity shall consider the following-

(a) any governmental, criminal justice system or administrative policy relating to the treatment of offences of the relevant kind;

(b) the nature of the offence, including the level of harm caused by or violence involved in its commission or alleged commission;

(c) the appropriateness of restorative justice at the current stage of the criminal justice proceeding in relation to the offence;

(d) any potential power imbalance between the persons who are to take part in restorative justice for the offence; and

(e) the physical and psychological safety of anyone who is to take part in restorative justice for the offence.

Suitability of victim for restorative justice.

21. In deciding whether restorative justice is suitable for a victim, the referring entity shall consider-

(a) the victim's reasons for taking part in restorative justice;

(b) the impact of the offence as perceived by the victim;

(c) whether the offence was committed by an eligible offender;

(d) whether the victim is capable of agreeing to take part in restorative justice;

(e) whether the victim agrees voluntarily to take part in restorative justice; and

(f) the potential psychological effects restorative justice may have on the victim.

Suitability of parent for restorative justice.

22. In deciding whether restorative justice is suitable for a parent of a child victim, the referring entity shall consider the-

(a) relationship between the parent and the child;

(b) parent's and the child victim's reasons for taking part in restorative justice; and

(c) impact of the offence as perceived by the parent and the child victim.

Suitability of offender for restorative justice.

23. In deciding whether restorative justice is suitable for an offender, the referring entity shall consider –

(a) the extent of the offender's remorse for the offence;

(b) the offender's motivation for taking part in restorative justice;

(c) the impact of the offence as perceived by the offender;

(d) whether the offender is capable of agreeing to take part in restorative justice and has voluntarily agreed to take part in restorative justice; and

(e) whether the offender has formally admitted to committing the offence.

PART VII

RESTORATIVE JUSTICE CONFERENCE

Restorative justice conference.

24. The Director may only organise a restorative justice conference if-

(a) it has been determined, by the referring entity, that under sections 20 to 23 restorative justice is suitable; and

(b) the victim or parent of a child victim, and offender give their consent for the conference to be organised.

Approved convenor.

25. (1) Where the Director decides that a restorative justice conference shall be held, the Director shall appoint an approved convenor.

(2) The approved convenor shall have the qualifications and experience to act as a convenor; and if the person is not a lawyer, the Director shall be satisfied that the person has received sufficient training-

(i) to advise those who take part in restorative justice of their rights and duties in relation to restorative justice under this Act; and

(ii) otherwise to exercise the functions of a convenor for this Act.

(3) In this section-

"approved convenor" means a convenor included on a list of convenors published by the Ministry responsible for legal affairs, whether on its website or otherwise, for the purposes of this section.

Functions of the Convenor.

26. (1) The Convenor shall be responsible for facilitating and ensuring all the necessary functions are conducted in relation to calling the conference, including the following-

(a) consulting a person with knowledge of or experience in a particular culture;

(b) inviting a person to take part in the conference;

(c) deciding whether the conference should require the participants to meet in person, or to communicate in any other way;

(d) fixing a time for the conference, and for any continuation of the conference;

(e) fixing a venue for the conference, if the participants are to meet in person;

(f) identifying the issues that should be addressed at the conference;

(g) warning participants about the potentially incriminating nature of any statement to be made, or being made, at the conference;

(h) facilitating an agreement between the participants;

(i) ensuring that this Act is complied with in relation to the conference and any agreement; and

(j) any other function required by regulations made under this Act.

(2) The Convenor shall carry out the functions mentioned in subsection (1) in a way that ensures the safety, rights and dignity of the participants.

Required participants for restorative justice conference.

27. (1) A restorative justice conference shall not proceed unless the victim, the victim's parent, as the case may be, and the offender attend.

(2) A person may take the place of the victim or parent of a child victim in the restorative justice conference only if-

(a) the victim or parent of a child victim asks for, or agrees to, the substitution; and

(b) the Convenor agrees to the substitution.

(3) If the conference results in a restorative justice agreement, the substitute participant shall sign the agreement on behalf of the victim or parent of a child victim.

Other participants.

28. (1) The Convenor may invite any of the following persons to take part in a restorative justice conference-

(a) the police officer who has custody of the matter;

(b) a parent of the victim or offender;

(c) the spouse, other family member or domestic partner of the victim, parent or offender; or

(d) anyone else, if-

(i) the victim, parent of the child victim, or offender, considers that the person can provide emotional or practical support for the victim, parent of the child victim or offender; or

(ii) the Convenor considers that the participation of the person would help to promote the objectives of this Act in relation to the conference.

(2) Where a required participant asks the Convenor to invite a person mentioned in subsection (1) to take part in the conference, the Convenor shall not refuse the request unless the Convenor considers, on reasonable grounds, that to invite the participant would be significantly detrimental to the objectives of this Act.

Convenor to inform participants about restorative justice, etc.

29. The Convenor shall before the commencement of a conference explain to each participant in a manner that the participant can understand the following-

(a) the objectives of this Act in relation to the conference, including the purpose of restorative justice generally and for the particular offence;

(b) the nature of restorative justice, including the following-

(i) the restorative justice process;

(ii) who may take part in a conference;

(iii) the restorative justice agreement; and

(iv) the role of the Convenor;

(c) that the person may, before and after the conference is called, seek independent legal advice about taking part in a conference and about the effect of any agreement reached at a conference;

(d) that no one is under an obligation to take part in the conference, or to continue to take part in the conference after it has started;

(e) that if the offender has not entered a plea for the offence that the acceptance of responsibility for the commission of the offence by the offender for the purpose of restorative justice does not prevent the offender from pleading not guilty to the offence; and

(f) that if the offender has not been sentenced but has been found guilty of the offence, a court, in sentencing the offender-

(i) may consider whether the offender accepts responsibility for the offence to take part in restorative justice, but is not required to reduce the severity of any sentence as a result; and

(ii) shall not consider whether the offender has chosen not to take part, or not to continue to take part, in restorative justice.

Form of restorative justice conference.

30. The Convenor may conduct the procedure in any form consistent with international restorative justice guidelines and best practices that would, in the Convenor's opinion, best facilitate-

(a) interaction between the participants; and

(b) the promotion of the objectives of this Act in relation to the conference, and includes-

(i) face-to-face meetings;

(ii) exchange of written or emailed statements between participants;

(iii) exchange of pre-recorded videos between participants;

(iv) teleconferencing;

(v) videoconferencing; and

(vi) any other practices or models of restorative justice.

Cancelling or discontinuing of restorative justice conference.

31. (1) The Convenor may cancel the conference before it is conducted or discontinue the conference at any time after it has started.

(2) A cancellation or discontinuation of a conference may be done only if, in the Convenor's opinion based on reasonable grounds, there is no significant prospect of promoting the objectives of this Act by conducting, or continuing to conduct, the conference.

(3) Notwithstanding subsection (2), the Convenor shall cancel or discontinue the conference if, before or during the conference-

(a) a victim or parent of a child victim has withdrawn his or her agreement to take part in the conference, and there is no other victim or parent, or substitute participant for a suitable victim or parent, who agrees to take part in the conference;

(b) the offender has withdrawn his or her agreement to take part in the conference; or

(c) something has occurred either before or during the procedure that has rendered the safety and security of the participants untenable.

(4) Where the Convenor decides to cancel or discontinue the conference, the Convenor shall give notice of this decision to-

(a) each required participant in the conference;

(b) the referring entity for the offence; and

(c) the Director.

Report on outcome of restorative justice conference.

32. (1) After the end of the conference, the Convenor shall give a report on the outcome of the conference to the Director.

(2) The report about the outcome of the conference shall include the following information-

(a) details of the conference and when it ended;

(b) whether the procedure resulted in a restorative justice agreement; and

(c) if the procedure resulted in a restorative justice agreement, the details of the agreement.

PART VIII

RESTORATIVE JUSTICE AGREEMENT

Restorative justice agreement.

33. (1) The restorative justice agreement shall be in writing and signed by-

(a) the victim;

(b) if a participant, the parent of the child victim;

(c) the offender; and

(d) the Convenor.

(2) The agreement shall set out the commitments the offender agrees to undertake in order to address the harm the offence has caused to the victim.

(3) The agreement shall provide that once the offender fulfils the commitments referred to in subsection (2), any criminal charges or potential criminal charges against the offender in respect of the offence shall be dealt with in accordance with section 35(1) (a), (2) (a) and (3) (a) and that no civil action shall be taken in respect of the harm referred to in subsection (2).

(4) If a substitute participant for a victim or parent of a child victim signs a restorative justice agreement-

(a) the substitute participant is taken to sign the agreement on behalf of the victim or parent of a child victim; and

(b) the victim or parent of a child victim is taken to have consented to the agreement.

(5) The agreement may include at least one or more of the following-

(a) an apology by the offender to any victim or parent of a child victim;

(b) a plan to address the offending behaviour of the offender;

(c) a work plan to be carried out by the offender for the benefit of any victim or parent of a child victim;

(d) a work plan to be carried out by the offender for the benefit of the community;

(e) financial restitution to be paid by the offender to any victim or parent of a child victim; or

(f) anything else that each participant in the conference agrees would help repair the harm caused by the offence.

(6) The agreement shall be fair and, in the opinion of each participant in the conference and the Convenor, reasonably able to be carried out by the offender.

(7) The agreement shall not require the offender or anyone else to do anything that would-

(a) be unlawful;

(b) require the detention of the offender;

(c) be degrading or humiliating to the offender or anyone else;

(d) cause distress to the offender or anyone else; or

(e) cause undue hardship or place the offender at risk for serious harm or death.

(8) The agreement shall be for a term not longer than twelve months, starting on-

(a) the date the agreement is made; or

(b) if a later starting date is stated in the agreement, that later date.

(9) The Convenor shall give a copy of the restorative justice agreement to-

(a) each participant in the conference;

(b) the referring entity; and

(c) the Director.

(10) Where the offender does not complete one or more of the commitments pursuant to the agreement under subsection (3), the offender may be returned to court for the exercise of the court's power.

Monitoring compliance of restorative justice agreement.

34. (1) The Director shall monitor the offender's compliance with the agreement.

(2) If the Director is satisfied on reasonable grounds that the restorative justice agreement has been substantially or fully complied with, the Director shall report the compliance to the referring entity.

(3) Where an individual is referred for restorative justice by a referring entity and the result is an agreement, the referring entity may do anything reasonable to check whether the agreement is being complied with.

(4) Where the Director is satisfied on reasonable grounds that there has been a significant failure to comply with the agreement, the Director shall report the non-compliance to the referring entity.

PART IX

MISCELLANEOUS

Effect of restorative justice order or referral.

35. (1) Where the court makes a restorative justice order in accordance with section 14(1) before the commencement of trial and the court has determined that-

(a) the matter has been solved by the restorative justice process, and that the commitments required to be performed under the agreement have been satisfactorily performed, the court shall make an order dismissing the charge against the offender; or

(b) the matter has not been solved by the restorative justice process, and there is no reasonable prospect of any resolution, the court shall proceed to, or resume, the trial.

(2) Where the court makes a restorative justice order by virtue of section 14(2) after the person charged has been convicted of the offence but prior to sentence being passed, and the court has determined that-

(a) an agreement has been arrived at by the parties, the court shall take into account the terms of the agreement, and the extent to which the commitments made in the agreement have been satisfactorily performed in determining how to proceed in relation to sentence, and shall proceed accordingly; or

(b) an agreement has not been arrived at by the parties, the court shall proceed to sentence the offender as if the restorative justice process had not occurred.

(3) Where the Director of Public Prosecutions has made a referral and is satisfied that-

(a) the matter has been solved by the restorative justice process, and the commitments required to be performed under the agreement have been satisfactorily performed, the Director of Public Prosecutions shall not recommend a charge against the offender; or

(b) the matter has not been solved by restorative justice process, and there is no reasonable prospect of a resolution, the Director of Public Prosecutions shall recommend that the offender be charged.

Protections in relation to restorative justice process.

36. (1) Any admission made or information disclosed for the purposes of restorative justice process shall-

(a) be treated as confidential; and

(b) not be admissible in any proceedings before a court or tribunal, and no person shall be compellable in any proceedings to disclose the admission or information or to

produce any document that contains the admission or information.

(2) An offender's consent to participate in a restorative justice programme or performance of any commitments made under a restorative justice agreement shall not amount to or be treated as a confession or an admission of guilt for the purposes of any criminal proceedings.

Annual report to the Council.

37. The Director shall send to the Council an annual report no later than three months after the end of a current year detailing the number of persons who accessed restorative justice, the outcomes, recidivism rate, and any other information that would assist the Council in advising the Minister.

Regulations.

38. The Minister may make regulations to give effect to the provisions of this Act and for maintaining an efficient system for restorative justice.

Amendment to the Schedules.

39. The Minister may, by order, amend the Schedules to the Act.

FIRST SCHEDULE (s. 14)

Offences in respect of which referral may be made to a Restorative Justice Programme before Trial

1. Any offence for which a term of imprisonment of not more than three years may be imposed.

Cap. 8:01

2. Any of the following offences under the Criminal Law (Offences) Act-
   (a) any offence under section 160;
   (b) simple larceny under section 164, other than larceny of agricultural products or livestock;
   (c) larceny from the person under section 182;
   (d) larceny by a tenant or lodger under section 183;
   (e) larceny by a clerk or servant under section 184;
   (f) larceny in a dwelling house under section 187;
   (g) embezzlement by a clerk or servant under section 190; and
   (h) fraudulent conversion of property entrusted for sale under section 198.

SECOND SCHEDULE (ss. 13 and 14)

Offences in respect of which referral shall not be made to a Restorative Justice Programme

1. Murder;
2. Any offence under section 102, 103 or 104 of the Criminal Law (Offences) Act; Cap. 8:01
3. Terrorism including terrorist financing;
4. Treason;
5. Any offence under the Sexual Offences Act; Cap. 8:03
6. Kidnapping, illegal restraint and hostage-taking;
7. Trafficking in persons and migrant smuggling;
8. Grievous bodily harm;
9. Extortion;
10. Participation in an organised criminal group and racketeering;
11. Piracy;
12. Illicit trafficking in narcotic drugs and psychotropic substances; and
13. Illicit arms and ammunition trafficking.

THIRD SCHEDULE (ss. 13 and 14)

FORM 1

Offender or Alleged Offender Consent Form

GOVERNMENT OF GUYANA
ATTORNEY GENERAL'S CHAMBERS
MINISTRY OF LEGAL AFFAIRS
RESTORATIVE JUSTICE PROGRAMME
CONSENT TO PARTICIPATE FORM

Consent of Person *[Arrested/Charged with] [Convicted of] a Relevant Offence to be Referred to a Restorative Justice Programme

I,_____of_____
_____having been *[arrested and charged with] [convicted of] the offence of_____ do hereby signify my consent to be referred to a restorative justice programme.

....

Signature of person *[arrested charged] [convicted] Date

....

Signature of Referring Entity Date

*Delete the option which does not apply.

FORM 2

Victim Consent Form

GOVERNMENT OF GUYANA
ATTORNEY GENERAL'S CHAMBERS
MINISTRY OF LEGAL AFFAIRS
RESTORATIVE JUSTICE PROGRAMME
CONSENT TO PARTICIPATE FORM

I, _____of _____ having been impacted by an offence of _____ do hereby signify my consent to participate in a restorative justice programme.

....

Signature of victim Date

....

Signature of Referring Entity Date

EXPLANATORY MEMORANDUM

This Bill seeks to introduce legislation to provide for the use of restorative justice in the criminal justice system which has as its primary objective repairing the harm caused by an offence. Restorative justice is an approach to problem solving that, in its various forms, involves the victim, the offender, and the community. Restorative justice programmes are based on the fundamental principle that criminal behaviour not only violates the law, but also injures victims and the community.

Overall, this Bill reaffirms the Government's commitment to strengthening the justice system in Guyana and reducing the prison population through alternative sentencing.

PART I sets out the short title and the definition of key words and terms found in the Bill. This Part also explains the objectives of this proposed legislation, which include supporting the development and usage of restorative justice programmes in Guyana, effect repair in communities and set up a system of restorative justice that brings together community residents, victims and offenders in a permissive, safe and carefully managed environment. This Part also states the principles underlying restorative justice. These principles highlight that restorative justice is to address and repair harm, participation is voluntary, and restorative justice shall be fair and unbiased towards participants. Further, this Part sets out that the offender when participating in restorative justice may be required to take steps to repair the harm done.

PART II sets out that restorative justice may be utilised before or after a person is charged with any offence even if the offence was committed before the commencement of the Act. Additionally, this Part sets out the persons who are eligible for restorative justice and the respective conditions that affect eligibility. The persons eligible are the victim, the parent of the victim, an immediate family member of the victim, and the offender. Additionally, this Part provides that where the offender is a juvenile, the principles and measures relating to the juvenile justice system and diversion shall apply to eligible offenders under this Act.

PART III provides for the Minister to appoint a Director of Restorative Justice and sets out the functions and duties of the Director. The main function of the Director is to manage and organise the restorative justice programme and supervise persons in the programme.

PART IV sets out the procedure for referring an offender to restorative justice. The court or the Director of Public Prosecutions (DPP) may refer an offender in writing to the Director for the offender's participation in restorative justice. The DPP may refer an offender before recommending that charges be instituted against the offender. On the other hand, the court may make a court order referring an offender to restorative justice before commencing the trial or after the trial has commenced. Where the court or DPP refers an offender for restorative justice, the consent of the victim and offender must be given. This Part also provides that the Director shall give the referring entity a written report on the outcome of the restorative justice process. Additionally, this Part sets out that before referring a participant to restorative justice, the referring entity must consider certain factors. These factors include whether a restorative justice programme exists, the possible benefits of participation in the programme and the risk that the offender may pose to the community. Further, this Part provides that where the victim or offender is unable to give consent because of age, physical, intellectual or mental impairment or the victim or offender is deceased, consent may be given by the victim or offender's parents or guardian.

PART V establishes the Advisory Council on Restorative Justice which shall consist of ten members. The Minister shall be the Chairperson of the Council. The role of the Council is to monitor the effectiveness of restorative justice programmes and provide advice and recommendations to the Minister on the design and content of restorative justice programmes, implementation and delivery of restorative justice programmes, and policies regarding restorative justice.

PART VI establishes criteria for deciding whether restorative justice is suitable for an offence, a victim, a parent of a child victim and the offender. For instance, in deciding whether restorative justice is suitable for a particular offence, the referring entity shall consider any governmental, criminal justice system or administrative policy relating to the treatment of offences of the relevant kind, the nature of the offence, including the level of harm caused by or violence involved in its commission or alleged commission and the physical and psychological safety of anyone who is to take part in restorative justice for the offence. As it relates to the victim, the referring entity shall consider *inter alia* the impact of the offence as perceived by the victim. With respect to the suitability of the parent of a child victim, the referring entity shall consider the relationship between the parent and the child and the parent's and child victim's reasons for taking part in restorative

justice. In deciding whether restorative justice is suitable for the offender, the referring entity shall consider *inter alia* the extent of the offender's remorse.

PART VII provides for the restorative justice conference and appointment of a convenor to facilitate the restorative justice conference. This Part also sets out that a restorative justice conference shall not proceed unless the victim, the victim's parents (if applicable) and the offender attends. Additionally, this Part provides that other participants including a police officer, a parent of the victim or offender, spouse or other family member may participate in the conference. Further, this Part sets out that the Convenor shall, before the commencement of the conference explain to the participants, *inter alia,* the objectives of the Act, the nature of restorative justice, the right to legal advice, that restorative justice is voluntary and the effect of not entering a plea or a finding of guilt by the court. Also, this Part sets out the form of restorative justice conference, the power of the Convenor to cancel or discontinue the conference and that the Convenor shall prepare a report on the outcome of the conference for the Director.

PART VIII provides for the restorative justice agreement which shall be in writing and signed by the Convenor, the offender and the victim. The agreement shall set out the commitments the offender agrees to undertake in order to repair the harm caused. Also, this Part provides that the Director shall monitor the offender's compliance with the agreement.

PART IX sets out the effect of a restorative justice order or referral. Additionally, this Part provides that any admission or information disclosed shall be treated as confidential and not be admissible in any proceedings before a court or tribunal, and no person shall be compellable in any proceedings to disclose the admission or information or to produce any document that contains the admission or information. Further, this Part provides that an offender's consent to participate in a restorative justice programme or an alleged offender's entry into, or performance of any commitments made under a restorative justice agreement under this Act, shall not amount to or be treated as a confession or an admission of guilt for the purposes of any criminal proceedings. Also, this Part provides for the Director to send an annual report to the Council and empowers the Minister to make regulations to give effect to the provisions of the Act and for maintaining an efficient system for restorative justice.

The **First Schedule** lists the offences in respect of which referral may be made to a Restorative Justice Programme before trial.

The **Second Schedule** lists the offences in respect of which referral shall not be made to a Restorative Justice Programme.

The **Third Schedule** sets out the Offender Consent Form and the Victim Consent Form.

Hon. Mohabir Anil Nandlall, SC, MP
Attorney General and
Minister of Legal Affairs