

CARIBBENA POISON INFORMATION NETWORK



TRAINING WORKSHOP ON POISON
PREVENTION OCTOBER 16 2008



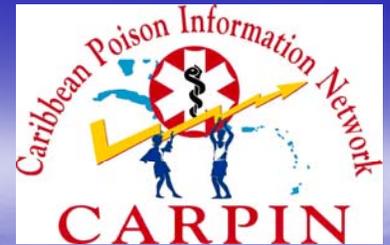
THE LEGAL ASPECTS OF
POISON IN RELATION TO THE
CHILD CARE AND
PROTECTION ACT



OBJECTS OF THE ACT-THE SAFETY AND WELL BEING OF CHILDREN

- The Child Care and Protection Act ('The Act') is generally concerned with protecting the wellbeing of children; **Section 3(a)** states that one of the objectives of the Act is
 - ... to promote the best interests, safety and well being of children ...





OBJECTS OF THE ACT-THE SAFETY AND WELL BEING OF CHILDREN

- **Section 2(3) supports this objective, it informs us that the paramount consideration which must guide the interpretation of the Act is THE BEST INTERESTS OF THE CHILD.**

OBJECTS OF THE ACT-THE SAFETY AND WELL BEING OF CHILDREN



- In determining what is the best interest of the child, one important factor to be taken into account is the safety of the child (**Section 2(2)(a)**).
- We can clearly see that there would be legal implications for poisoning or exposing children to poisons as this would be endangering the safety of the child, and as such a violation of the law. **THE BACK GROUND AGAINST WHICH THIS TOPIC IS SET.**

EXPRESS DUTY TO PROTECT CHILDREN FROM POISONING



- EXPRESS DUTY TO PROTECT CHILDREN FROM POISONING
- ‘Poison’, in its simplest form, is any substance that can cause harm, severe distress or death if ingested, breathed in, or absorbed through the skin; in short, it is anything that endangers a person’s health and well-being. The Act is clearly seeking to protect children from the risk of poisoning , when it employs the principle that
- ‘ children are entitled to be protected from abuse, neglect and harm or threat of harm’ (Sec 2(3)(a)).

OBJECTS OF THE ACT-THE SAFETY AND WELL BEING OF CHILDREN



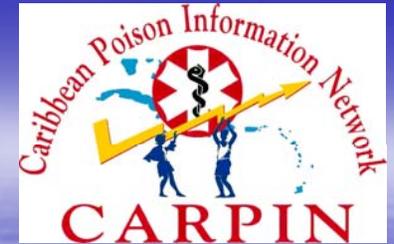
- This is further supported by Sec 9(1) of the Act which states that an adult person who has
- custody, charge or care of a child commits an offence where that person
- **‘willfully...neglected, abandoned or exposed (the child) in a manner likely to cause the child unnecessary suffering or injury to health...’(emphasis added).**

OBJECTS OF THE ACT-THE SAFETY AND WELL BEING OF CHILDREN



- The Act becomes even more specific in Section 9 (3) where it explains what is meant by ‘neglect’, and in so doing, speaks directly to the issue of the poisoning of children who are in the care of adults. It states (in part):
- ... [a] person[s] ... shall ... be deemed to have neglected a child in a manner likely to cause injury to the child’s health, that is to say –
- any adult having custody, charge or care of any child, who allows that child to –
 - have access to any poisonous or flammable substances,
 - not sufficiently protected to guard against the risk of that child being poisoned ... without taking reasonable precautions against the risk, and by reason thereof that child is killed or suffers serious injury ...

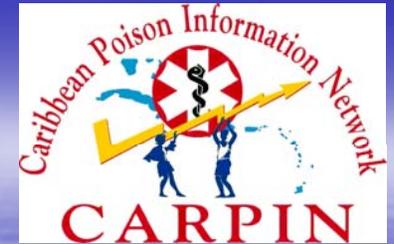
OBJECTS OF THE ACT-THE SAFETY



AND WELL BEING OF CHILDREN

- The Act also expressly forbids adults to give to or sell intoxicating liquor to a child. The Act regards any such act as ill-treatment of a child. Section 9(4) states (in part):
- **Any adult ... who gives or causes to be given, or sells or causes to be sold, to any child any intoxicating liquor, except upon the order of a ... medical practitioner ... shall be deemed to have ill treated that child in a manner likely to cause injury to the child's health.**

PENALTIES FOR BREACH OF SECTION 9



- Ill-treating a child and neglecting a child (in other words giving or selling intoxicating liquor to a child and exposing the child to poisonous or flammable substances) attracts very serious penalties.
- If a person is convicted in a Circuit Court, the Judge has unlimited power to impose a fine, and power to imprison the accused for up to five years. The Judge can either fine or imprison the person, or both. If the person is convicted in a Resident Magistrate's Court, he or she can be fined up to one million dollars or imprisoned for a maximum term of three years, or the Magistrate can impose both fine and imprisonment. **(Section 9(7)(a)(b))**

DUTY TO REPORT SUSPICIONS OF CHILDREN IN NEED OF CARE AND PROTECTION



- There was a time when there was no legal duty to report a crime to the authorities. Now, however, in relation to children, the Act has made it a legal duty to report to the appropriate authorities cases where it is suspected that children have been, is being or is likely to be abandoned, neglected or physically or sexually ill-treated

DUTY TO REPORT SUSPICIONS OF CHILDREN IN NEED OF CARE AND PROTECTION



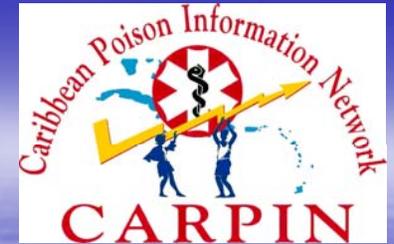
- This duty to report is found in **Section 6(2)(a)**:
 - Any person who has information which causes that person to suspect that a child –
 - have been, is being or is likely to be abandoned, neglected or physically or sexually ill-treated ...
 - shall make a report to the Registry.

DUTY TO REPORT SUSPICIONS OF CHILDREN IN NEED OF CARE AND PROTECTION



- Now, recall that ‘neglecting’ and ‘ill-treating’ children encompass exposing them to poisonous substances; it follows then, that a legal duty exists to report to the appropriate authorities suspected cases of children exposed to some risk of serious poisoning

DUTY TO REPORT SUSPICIONS OF CHILDREN IN NEED OF CARE AND PROTECTION



- Bear in mind too, that there is a penalty for breach of this obligation to report: according to **Section 6(4)**, a person who fails or refuses to make a report to the appropriate authority ...
- ...shall be liable upon summary conviction before a Resident Magistrate to a fine not exceeding five hundred thousand dollars or to imprisonment to a term not exceeding six months or to both such fine and imprisonment...

DUTY TO REPORT SUSPICIONS OF CHILDREN IN NEED OF CARE AND PROTECTION



- This duty to report also exists in respect of children who are deemed to be in need of ‘care and protection’. Section 8(1) elaborates on what “in need of care and protection” means.

DUTY TO REPORT SUSPICIONS OF CHILDREN IN NEED OF CARE AND PROTECTION



It states in part:

- For the purposes of this Act a child shall be considered to be in need of care and protection if that child –
- ...
- is being cared for in circumstances in which the child's physical or mental health or emotional state is being seriously impaired or there is a substantial risk that it will be seriously impaired



- So the duty to make a report to the appropriate authority applies in a case where a person is made aware that a child is exposed to a risk of poisoning.



CHILDREN NOT TO BE SOLD OR
SERVED, NOR TO SELL OR
ASSIST IN THE SELLING OF
TOBACCO PRODUCTS AND
INTOXICATING LIQUOR



- Section 40 of the Child Care and Protection Act is self-explanatory. It states (in part):
- **(1) An owner or operator of an establishment that sells or serves intoxicating liquor or tobacco products shall ensure that –**
- **no intoxicating liquor or tobacco product is sold or served by the establishment to any child; and**
- **no child is employed by the establishment to sell or assist in the selling of intoxicating liquor or tobacco products**



- **A person commits an offence if that person –**
 - **contravenes subsection (1);**
 - **employs a child to sell or assist in selling intoxicating liquor or tobacco products; or**
 - **purchases intoxicating liquor or tobacco products from a child:**



- This section does not prescribe a specific punishment for an offence committed under it. However, there is a general penalty provided in section 89, which speaks for itself. It states (in part):
- **Any person who commits an offence under this Act ... for which no special punishment is provided, shall be liable on summary conviction ... to a fine not exceeding two hundred and fifty thousand dollars, and in default of payment to imprisonment with hard labour for a term not exceeding three months.**



THE END