

**JOHANNESBURG HIGH COURT TO HEAR CASE
ON WHETHER CHILDREN “SMOKING WEED” SHOULD BE
CRIMINALISED**

FOR IMMEDIATE RELEASE

19 September 2019

Today , the High Court in Johannesburg will hear a matter on whether children who are found to have been in possession and/or used cannabis – and contravening section 4(b) of the Drugs and Drug Trafficking Act 140 of 1992 – should be criminally prosecuted. The Centre for Child Law will be making arguments as a ‘friend of the court’.

This case arose when a number of children had, we presume, been arrested and brought before the Child Justice Court, Krugersdorp following each of them testing positive for cannabis during a drug test. In each matter the child was diverted and in each matter the child, for reasons unknown, failed to comply with the terms of the diversion order. The children were then ordered to undergo compulsory residence at the Mogale Leseding Child and Youth Care Centre owned and operated by BOSASA for an unspecified period.

An issue that arose was whether a criminal justice response to the use and/or possession of cannabis by children was the most appropriate response, especially considering the Constitutional Court judgment in *Prince*. The Centre for Child Law will argue that it is not. The Centre believes that a more appropriate response would be to deal with the child either under the Children’s Act 38 of 2005 or the Prevention of and Treatment for Substance Abuse Act 70 of 2008. Emphasis should rather be placed on treating children for drug dependency rather than criminalising, incarcerating and punishing them, especially when adults in the same position are treated differently.

The Minister of Justice and Correctional Services, in written submissions to the court, confirms that there is undisputable evidence that arresting children for the use of cannabis has a negative effect on them in the present and throughout their lives. The Minister is of the view that the best interest of the child principle requires that a child

orientated approach should be followed to deal with drug abuse by children. Such an approach may include drug awareness and educational programs, drug prevention programs, treatment and rehabilitation.

The Minister is of the view that it is unfair to subject children to criminal prosecution and incarceration for the use and possession of cannabis when the same is not true for adults. This amounts to unfair discrimination and the declaration of invalidity is necessary in order to ensure that children are dealt with in a more appropriate manner.

The Centre for Child Law is pleased by the stance taken by the Minister as it seeks to assist children rather than to punish them. The Centre reiterates the fact that it does not argue that children should be allowed to use cannabis. The Centre argues that if children are found to be using cannabis then they should not be dealt with by the criminal justice system. The children should instead receive the support of parents, communities, Department of Social Development and/or other certified social welfare services which will ensure that the children receive the rehabilitative programmes needed having taken their individual needs into account. The aim of this approach is to avoid children being exposed to the brutalising effect of the criminal justice system that does not have the necessary mechanisms to properly deal with cannabis dependency.

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