

# **CHILD LAW MATTERS**

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Dear Colleagues

In recent Newspaper publications the treatment of children who are arrested for alleged crimes has been on the spotlight, particularly the problem with the detention of such children under unsuitable circumstances which range from detention for crimes that children should not be held in custody for to detention of such children with adult accused. This issue gives an overview of the legislation that protects children who are arrested and how the police should deal with such children

## **DETAINING UNCONVICTED CHILDREN**

When it comes to detaining children the Constitution requires such detention to be a measure of last resort and to be only for the shortest period of time. However, even before these constitutional requirements came to light specific legal rules were put in place regarding the detention of young persons. These rules are set out in section 29 of the Correctional Services Act 8 of 1959 which is one of a few sections that survived the repeal of this old Act.

The general rule contained in section 29 is that unconvicted children under 14 years and children from age 14 to 17 may not be detained in a police cell, lock-up or prison. However in certain circumstances a child below 14 can be detained in a police cell for up to 24 hours before his or her first court appearance and in the case of children between 14 and 18 they can be detained for up to 48 hours before their first court appearance. These children can be so detained if the

detention is necessary, in the interest of justice and if the child cannot be placed with parents / guardian or other suitable person or in another suitable place, like a place of safety.

The person (usually a police officer) who ordered the child's detention must provide the court with reasons as to why it was necessary to detain the child in a cell or lock-up until the child's first court appearance. Reasons for the detention must also be given to the magistrate even if the child was released before his or her first court appearance.

Section 29(5) provides that after the first court appearance a child between 14 and 18 can be further detained in a prison (but not a police-cell or lock-up) if the presiding officer believes that the detention is necessary, in the interest of justice and public safety and there is no secure place of safety within a reasonable distance from the court where the child can be placed. However the child can only be detained in a prison (but not in a police-cell or lock-up) if he or she committed a serious offence (like murder, rape, kidnapping) and the child must be brought before the court every 14 days for his custody to be reviewed. The offences are listed in Schedule 2 of the Act, which is attached to this e-mail. It is important to note that housebreaking and theft are not on the list. It is therefore generally unlawful to hold children charged with any offence not listed in Schedule 2 unless the presiding officer finds that the circumstances are of such a serious nature as to warrant such detention.

Section 29 of the Correctional Services Act 8 of 1959 is in line with the Constitution in its aim to ensure that detention is a measure of last resort, particularly as far as children under 14 years are concerned. There is still some concern that certain children are returned to police cells and detained there after their first appearance, which is contrary to requirements of section 29(5). Such children should either be released to parents, placed in a place of safety or secure care facility or, if all the requirements are met, may be held in a prison.

The Child Justice Bill that is currently before parliament will provide new provisions that are similar in effect to section 29 of the old Correctional Services Act. Until such time as the Bill is passed, section 29 remains the applicable legislation.