

**THE CONSTITUTIONAL COURT TO HEAR A CONFIRMATION HEARING STATING THAT  
THE CRIMINAL JUSTICE SYSTEM IS NOT THE CORRECT FORUM TO DEAL WITH  
CHILDREN USING ADDICTIVE SUBSTANCES**

**FOR IMMEDIATE RELEASE**

**3 March 2022**

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On 3 March 2022 the Centre for Child Law will be in the Constitutional Court of South Africa for an application for the confirmation of the unconstitutionality of section 4(1)(b) of the Drugs and Drug Trafficking Act 140 of 1992. The High Court declared the provision unconstitutional, on 3 July 2020, in so far as it criminalised children who were in possession of and/or used cannabis. This follows the *Prince* judgment that decriminalised the personal use of cannabis for adults. Furthermore, the declaration of unconstitutionality aligns with section 3(b) of the Child Justice Act 75 of 2008 which states that “a child must not be treated more severely than an adult would have been treated in the same circumstances”.

The Centre for Child Law was invited by the High Court, to be an *amicus curiae*, to make submissions regarding the treatment of children charged with allegedly contravening section 4(1)(b) of the Drugs and Drug Trafficking Act 140 of 1992. The facts that gave rise to the matter are:

- A School had the reasonable suspicion that pupils had smoked cannabis. Instead of the school testing the children’s urine themselves - strictly for disciplinary purposes, as dictated by the South African School’s Act. The school instead, called the SAPS to come and test the children’s urine. This approach, goes against the South African School’s Act; law of evidence as well as general criminal procedure.
- A significant number of children had been arrested and brought before the Child Justice Court in Krugersdorp following each of them testing positive for cannabis during the drug test at school.
- 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, as a consequence, ordered to undergo compulsory residence at the Mogale Leseding Child and Youth Care Centre owned and operated by BOSASA for an unspecified period.

Several issues arise from the above case but the matter focuses on whether a criminal justice response to the use and/or possession of cannabis was the most appropriate manner to deal

with children suffering from a cannabis related drug dependency, especially considering the Constitutional Court judgment in *Prince*. The Centre for Child Law is of the view 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. This is the view also held by the Minister of Justice and Correctional Services as well as the High Court itself.

The Centre firmly believes that emphasis should rather be placed on treating children for drug dependency rather than criminalising, incarcerating and punishing them. The CCL also calls for the proper implementation of the Child Justice Act when dealing with children who have allegedly contravened the law and where a child may be in need of care and protection due to the use of substance, the Children's Act provides for such a child to access appropriate rehabilitative programmes.

This case **is not** about advocating for children to smoke cannabis. This case **is about** the proper process to be followed when a child is found to have smoked or tests positive for cannabis, which **should not** include the criminal justice system. The children should instead receive the support of parents, communities and the support already provided by the 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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