

Passed by both Houses



New South Wales

Children (Detention Centres) Amendment Bill 2006

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I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney, , 2006*



New South Wales

Children (Detention Centres) Amendment Bill 2006

Act No , 2006

An Act to amend the *Children (Detention Centres) Act 1987* in relation to the administration of detention centres and the management of detainees; and for other purposes.

I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.

Chairman of Committees of the Legislative Assembly.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Children (Detention Centres) Amendment Act 2006*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Amendment of Children (Detention Centres) Act 1987 No 57

The *Children (Detention Centres) Act 1987* is amended as set out in Schedule 1.

4 Amendment of other Acts

Each Act specified in Schedule 2 is amended as set out in that Schedule.

5 Repeal of Act

- (1) This Act is repealed on the day following the day on which all of the provisions of this Act have commenced.
- (2) The repeal of this Act does not, because of the operation of section 30 of the *Interpretation Act 1987*, affect any amendment made by this Act.

Schedule 1 Amendment of Children (Detention Centres) Act 1987

(Section 3)

[1] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

Chief Executive Officer, Justice Health means the person for the time being holding office or acting as the chief executive officer of Justice Health under the *Health Services Act 1997*.

correctional officer has the same meaning as it has in the *Crimes (Administration of Sentences) Act 1999*.

Justice Health means the statutory health corporation of that name specified in Schedule 2 to the *Health Services Act 1997*.

juvenile justice officer means a member of staff of the Department, and includes a correctional officer exercising functions pursuant to section 26 (1).

medical officer, in relation to a detention centre, means a medical officer appointed for the detention centre as referred to in section 37G.

[2] Section 3 (1), definition of “officer”

Omit the definition.

[3] Section 6 Director-General to have control and management of detention centres

Insert “, subject to section 26” after “detention centres”.

[4] Sections 7 (1), 8A (2), 19 (1) (e), 21 (2) (c), 23A (2), 25 (4), 38 (3), 40 (2) and 42 (3)

Omit “an officer” wherever occurring.

Insert instead “a juvenile justice officer”.

[5] Section 7 Inspection of detention centres by officer appointed by Director-General

Omit “the officer” wherever occurring in section 7 (2) and (3).

Insert instead “the juvenile justice officer”.

[6] Section 14 Functions of the Director-General

Insert at the end of the section:

- (2) In exercising any function under this section in relation to a detainee who is a forensic patient within the meaning of the *Mental Health Act 1990*, the Director-General must consult with, and have regard to the recommendations of, the Director-General of the Department of Health.

[7] Section 19 Segregation of detainees for protection

Omit section 19 (1) (b). Insert instead:

- (b) the duration of the segregation is to be as short as practicable and, in any case, must not exceed 3 hours except with the approval of the Director-General,

[8] Section 21 Punishments for misbehaviour

Omit “3 hours” and “12 hours” from section 21 (1) (d).

Insert instead “12 hours” and “24 hours”, respectively.

[9] Section 25 Removal to hospital of detainees

Omit “any officer” from section 25 (3).

Insert instead “a juvenile justice officer”.

[10] Section 26

Insert after section 25:

26 Use of Corrective Services staff in dealing with riots and disturbances

- (1) The Director-General may enter into a memorandum of understanding with the Commissioner of Corrective Services with respect to the handling of riots and disturbances at detention centres.
- (2) In accordance with any such memorandum of understanding, the Director-General may request the Commissioner of Corrective Services for assistance in dealing with a riot or disturbance that has arisen, or that appears to be imminent, at a detention centre.
- (3) For the purpose of dealing with a riot or disturbance at a detention centre pursuant to such a request:
 - (a) the Commissioner of Corrective Services:
 - (i) has the control and management of the detention centre, and

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- (ii) has and may exercise the functions of the Director-General in relation to the detention centre, and
 - (iii) has the same functions and immunities in relation to the control of detainees at the detention centre as he or she has in relation to the control of inmates in a correctional centre, and
 - (b) any correctional officer authorised by the Commissioner of Corrective Services for the purposes of this section:
 - (i) has and may exercise the functions of a juvenile justice officer in relation to the detention centre, and
 - (ii) has the same functions and immunities in relation to the control of detainees at the detention centre as he or she has in relation to the control of inmates in a correctional centre.
 - (4) In particular, dogs may be used to assist in the maintenance of good order and security in a detention centre in the same way as dogs may be used to assist in the maintenance of good order and security in a correctional centre.
 - (5) As soon as practicable after good order and security have been restored at the detention centre, the Commissioner of Corrective Services must return control and management of the detention centre to the Director-General.
 - (6) While the Commissioner of Corrective Services has the control and management of a detention centre, the Director-General may not exercise any function in relation to the detention centre except to the extent to which the function is delegated to the Director-General by the Commissioner.
 - (7) A request under subsection (2) may relate to part only of a detention centre, in which case any reference in this section to a detention centre extends only to that part of the detention centre.
 - (8) The regulations may establish transitional arrangements with respect to any transfer under this section, from the Director-General to the Commissioner of Corrective Services or from the Commissioner of Corrective Services to the Director-General, of the control and management of a detention centre.

[11] Section 27

Insert before section 28:

27 Medical attention

- (1) A detainee must be supplied with such medical attendance, treatment and medicine as in the opinion of a medical officer is necessary for the preservation of the health of the detainee, of other detainees and of any other person.
- (2) A medical practitioner (whether a medical officer or not) may carry out medical treatment on a detainee without the detainee's consent if the Chief Executive Officer, Justice Health is of the opinion, having taken into account the cultural background and religious views of the detainee, that it is necessary to do so in order to save the detainee's life or to prevent serious damage to the detainee's health.
- (3) Medical treatment carried out on a detainee under this section is, for all purposes, taken to have been carried out with the detainee's consent.
- (4) Nothing in this section relieves a medical practitioner from liability in respect of the carrying out of medical treatment on a detainee, being a liability to which the medical practitioner would have been subject had the treatment been carried out with the detainee's consent.
- (5) If the Chief Executive Officer, Justice Health is not a medical practitioner, the reference to the Chief Executive Officer, Justice Health in subsection (2) is taken to be a reference to a person, designated by the Chief Executive Officer for the purposes of that subsection, who is a medical practitioner.

[12] Section 28 Transfer of older detainees from detention centres to correctional centres

Omit "juvenile" wherever occurring in section 28 (1) and (3).

[13] Section 28 (1A)

Insert after section 28 (1):

- (1A) An order may be made under subsection (1) not only in relation to a detainee who is currently detained in a detention centre but also in relation to:
 - (a) a detainee who is absent from a detention centre, whether pursuant to leave of absence or otherwise, or

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- (b) a detainee who is being returned to a detention centre following revocation of his or her parole under Part 7 of the *Crimes (Administration of Sentences) Act 1999* (as applied by section 29 of this Act), whether pursuant to a warrant in force under section 181 of that Act or otherwise.

[14] Section 28 (2)

Omit “An order may not be made under subsection (1) in respect of a detainee unless”.

Insert instead “In the case of a detainee who is under the age of 18 years, an order may not be made under subsection (1) unless”.

[15] Section 28 (2A) and (2B)

Insert after section 28 (2):

- (2A) In the case of a detainee who is of or above the age of 18 years, but under the age of 21 years, an order may not be made under subsection (1) unless:
- (a) the Children’s Court makes an order authorising the making of such an order, or
 - (b) the detainee applies to the Director-General in writing for the detainee’s transfer to a correctional centre, or
 - (c) one or more of the circumstances referred to in subsection (2) applies in relation to the detainee.
- (2B) An order under subsection (1) with respect to a detainee who is under the age of 18 years may only be made for the purpose of transferring the detainee to a juvenile correctional centre.

[16] Section 32A

Insert after section 32:

32A Regulations

The regulations may make provision for or with respect to the following matters:

- (a) the management, control, administration, supervision and inspection of detention centres,
- (b) the procedure to be followed when admitting a detainee into a detention centre, including the procedure for accepting or refusing custody of property in a detainee’s possession when the detainee is admitted,

- (c) the classification of detainees into different categories and the separation of detainees by reference to the categories into which they have been classified,
- (d) the procedure to be followed when releasing a detainee from a detention centre, including the procedure for returning property accepted from a detainee when the detainee was admitted into the detention centre,
- (e) the physical, psychological and spiritual welfare of detainees while in custody and following their release,
- (f) the expenditure of money (or money's worth) by detainees,
- (g) the circumstances in which a detainee may lawfully acquire or retain possession of property within a detention centre,
- (h) the forfeiture and disposal of a detainee's abandoned or unclaimed property (including money), or of unhygienic or otherwise dangerous property (including money) received from, or sent to, a detainee,
- (i) the seizure, forfeiture and disposal of property brought into a detention centre in contravention of this Act, the regulations or any other law,
- (j) visits to detainees, including:
 - (i) the days and times that visits may be allowed, and
 - (ii) the maximum number of persons who may visit a detainee at the same time, and
 - (iii) the classes of persons who may be prohibited from visiting detainees, and
 - (iv) the conditions that must be observed by persons intending to visit a detainee before such a visit will be allowed, and
 - (v) the procedures to be observed by visitors and detainees during visits,
- (k) the making and receiving of telephone calls by detainees,
- (l) the sending and receiving of letters and parcels by detainees, including the circumstances in which letters and parcels may be opened for inspection or confiscated,
- (m) the procedures to be followed by a detainee when applying for leave of absence, and the circumstances under which such leave may be granted,

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- (n) the procedures to be followed by a detainee, and the facilities to be provided to a detainee, for the purpose of enabling the detainee to make a complaint to the centre manager of the detention centre or to any other person or body,
 - (o) the observance by detainees of religious rites and obligations,
 - (p) the acquisition by detainees of education and vocational training,
 - (q) the provision to detainees of medical, surgical and dental treatment,
 - (r) the circumstances in which a body search may be conducted on a detainee, the procedures to be followed in conducting a body search and the persons by whom, or in whose presence, a body search is to be conducted,
 - (s) the circumstances in which a juvenile justice officer may use force against a detainee, and the keeping of records of the occasions on which force is so used,
 - (t) the equipment that may be used to restrain a detainee, and the circumstances in which, and the maximum periods for which, a detainee may be restrained by means of such equipment,
 - (u) the circumstances in which a detainee may be tested for drugs or alcohol, the use of a non-invasive sample provided by, or taken from, a detainee for the purposes of a test for drugs or alcohol and the nature of the tests to be used,
 - (v) analyses in connection with any such tests and the admission of certificates relating to the results of any such analyses as prima facie evidence in any proceedings for misbehaviour being dealt with under this Act,
 - (w) the appointment of ministers of religion and other spiritual advisors for detention centres,
 - (x) the functions of juvenile justice officers and other staff employed within a detention centre.

[17] Section 36 Permitting escapes

Omit “An officer”. Insert instead “A juvenile justice officer”.

[18] Part 4A

Insert after Part 4:

Part 4A Administration

Division 1 Health

37E Functions of Justice Health

Justice Health, in addition to any other functions conferred on it by or under this or any other Act or law, has the following functions:

- (a) to provide health services to detainees,
- (b) to prevent the spread of infectious diseases in, or in relation to, detention centres,
- (c) to keep medical records of detainees,
- (d) to provide advice to the Director-General on the diet, exercise, clothing, capacity to work and general hygiene of detainees.

37F CEO, Justice Health, to have access to detention centres, detainees and medical records

For the purpose of ensuring that the provisions of this Act and the regulations (in so far as they relate to the functions of Justice Health) are being complied with at a detention centre, the Chief Executive Officer, Justice Health, is to have free and unfettered access at all times to all parts of the detention centre, to all medical records held at the detention centre and to all detainees held in custody in the detention centre.

37G Appointment of medical officers

- (1) The Chief Executive Officer, Justice Health, may appoint one or more registered medical practitioners as medical officers for a detention centre.
- (2) A registered medical practitioner may be appointed as a medical officer for one or more detention centres.
- (3) A medical officer is subject to the direction and control of the Chief Executive Officer, Justice Health.
- (4) A medical officer for a detention centre is to attend the detention centre as regularly and frequently as is necessary to comply with the medical officer's statutory obligations.

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- (5) The Chief Executive Officer, Justice Health is to keep such statistical records, and furnish to the Director-General such returns, as the Director-General may direct in relation to health services provided to detainees.
 - (6) A person who held office as a medical officer for a detention centre immediately before the commencement of this section is taken to hold office pursuant to an appointment under this section, and the appointment may be suspended or revoked accordingly.

37H Delegation of functions of CEO, Justice Health

- (1) The Chief Executive Officer, Justice Health, may delegate to any person any of the Chief Executive Officer's functions under this Act, other than this power of delegation.
- (2) Subsection (1) does not enable the Chief Executive Officer, Justice Health to delegate the right of free and unfettered access conferred on the Chief Executive Officer by section 37F.

Division 2 Testing of juvenile justice officers for alcohol and prohibited drugs

37I Definitions

In this Division:

authorised person means a person appointed in accordance with the regulations to be an authorised person for the purposes of this Division.

breath analysing instrument means any instrument approved by the Governor by order under the *Road Transport (Safety and Traffic Management) Act 1999* as such an instrument, that is, an instrument designed to ascertain, by analysis of a person's breath, the concentration of alcohol present in the person's blood.

breath analysis means a test carried out by a breath analysing instrument for the purpose of ascertaining, by analysis of a person's breath, the concentration of alcohol present in that person's blood.

breath test means a test:

- (a) that is designed to indicate the concentration of alcohol in a person's blood, or whether a particular concentration of alcohol is or may be present in a person's blood, and
- (b) that is carried out on the person's breath by means of a device (not being a breath analysing instrument) of a type approved by the Governor for the conduct of breath tests

under the *Road Transport (Safety and Traffic Management) Act 1999*.

hospital means a public or private hospital, and includes any premises, institution or establishment prescribed by the regulations as a hospital for the purposes of this Division.

prohibited drug has the same meaning as in the *Drug Misuse and Trafficking Act 1985*.

37J Testing of juvenile justice officers for alcohol and prohibited drugs

- (1) An authorised person may require any juvenile justice officer who is on duty, or who is present at the juvenile justice officer's place of work and about to go on duty:
 - (a) to undergo a breath test, or submit to a breath analysis, for the purpose of testing for the presence or concentration of alcohol, or
 - (b) to provide, or enable to be taken, a non-invasive sample from the juvenile justice officer for the purpose of testing for the presence of prohibited drugs,in accordance with the directions of the authorised person and the regulations.
- (2) The selection of a juvenile justice officer for testing under subsection (1) may be conducted on a random or targeted basis.
- (3) Without limiting the generality of subsection (1), if an incident occurs in which a person dies or is injured while in the custody of a juvenile justice officer, an authorised person may require any juvenile justice officer involved in the incident:
 - (a) to undergo a breath test, or submit to a breath analysis, for the purpose of testing for the presence or concentration of alcohol, or
 - (b) to provide, or enable to be taken, a non-invasive sample from the juvenile justice officer for the purpose of testing for the presence of prohibited drugs,in accordance with the directions of the authorised person and the regulations.
- (4) An authorised person may require the juvenile justice officer to remain on the premises where the test is to be conducted until the test is completed.
- (5) A requirement pursuant to subsection (3) to undergo a test or to provide a sample is to be made by the authorised person as soon as practicable after the incident occurs.

37K Testing where juvenile justice officer attends hospital

- (1) If a juvenile justice officer attends or is admitted to a hospital for examination or treatment because of an incident referred to in section 37J (3), an authorised person may require the juvenile justice officer to provide, or enable to be taken, a sample of blood or a non-invasive sample from the juvenile justice officer in accordance with the directions of a medical practitioner who attends the juvenile justice officer at the hospital.
- (2) Any such medical practitioner must take the sample if informed by an authorised person that the sample is required to be taken by the practitioner, but not a sample of blood if such a sample is taken under Division 4 of Part 2 of the *Road Transport (Safety and Traffic Management) Act 1999* instead.
- (3) If there is no medical practitioner present to attend the juvenile justice officer at the hospital, the sample is to be taken by a registered nurse who is attending the juvenile justice officer and who is accredited by a hospital to perform the sampling procedures.
- (4) Sections 21 and 22 of the *Road Transport (Safety and Traffic Management) Act 1999* apply to any taking, or provision, of a sample of blood or a non-invasive sample under subsection (1) as if the sample were a sample of blood taken under Division 4 of Part 2 of that Act.
- (5) Any sample taken under subsection (1) is to be dealt with, and a report on the analysis of the sample is to be provided, in accordance with the regulations.
- (6) Nothing in this section or the regulations derogates from the operation of Division 4 of Part 2 of the *Road Transport (Safety and Traffic Management) Act 1999*.

37L Protection from liability

- (1) A medical practitioner does not incur any civil or criminal liability in respect of anything properly and necessarily done by the practitioner in the course of taking, or being provided with, a sample of blood or a non-invasive sample from a juvenile justice officer for the purpose of its being used by an analyst to detect the presence of alcohol or any prohibited drug if the practitioner:
 - (a) believed on reasonable grounds that he or she was required under this Act to take, or be provided with, the sample of blood or the non-invasive sample from the juvenile justice officer, or

- (b) was informed by an authorised person that the juvenile justice officer was a person from whom the practitioner was required under this Act to take, or be provided with, the sample of blood or the non-invasive sample.
- (2) Subsection (1) extends to a registered nurse, or any person acting under the supervision of the medical practitioner, who performs the functions of a medical practitioner under this Division in accordance with this Division or the regulations.

37M Regulations

The regulations may make provision for or with respect to the following:

- (a) the appointment of authorised persons for the purposes of this Division,
- (b) the conduct of testing,
- (c) the taking of samples of blood or non-invasive samples,
- (d) the taking of a sample of blood at the choice of a juvenile justice officer for the juvenile justice officer to retain or arrange to be analysed (or both),
- (e) the provision of a non-invasive sample from the juvenile justice officer for the purpose of testing for the presence of prohibited drugs,
- (f) the devices used in carrying out the breath tests, breath analyses and other tests, including the calibration, inspection and testing of those devices,
- (g) the accreditation of persons conducting analyses for the presence of prohibited drugs,
- (h) the procedure for the handling and analysis of samples of blood or non-invasive samples,
- (i) offences relating to interference with test results or the testing procedure,
- (j) the consequences of refusing to comply with a requirement of or under this Division,
- (k) the consequences for juvenile justice officers of testing positive for alcohol or prohibited drugs,
- (l) the evidentiary value and use of certificates relating to the analysis of a sample or the authorisation of persons,
- (m) the confidentiality of test results.

[19] Section 38 Arrest of escapees etc

Omit “An officer” wherever occurring in section 38 (1) and (4).

Insert instead “A juvenile justice officer”.

[20] Section 40 Evidentiary matters

Omit “or officer” from section 40 (2).

Insert instead “or juvenile justice officer”.

[21] Section 42 Attendance of persons subject to control before courts and court officers

Omit “officer or” from section 42 (4).

Insert instead “juvenile justice officer or”.

[22] Schedule 1 Savings and transitional provisions

Insert at the end of clause 1A (1):

Children (Detention Centres) Amendment Act 2006

[23] Schedule 1, Part 4

Insert after Part 3:

**Part 4 Provisions consequent on enactment of
Children (Detention Centres) Amendment
Act 2006**

7 Definition

In this Part, *the 2006 amending Act* means the *Children (Detention Centres) Amendment Act 2006*.

8 Punishments for misbehaviour: section 21

Section 21, as in force immediately before the commencement of the amendments made to that section by the 2006 amending Act, continues to apply to misbehaviour that occurred before that commencement as if that Act had not been enacted.

9 Transfer of older detainees to juvenile correctional centres

Section 28, as amended by the 2006 amending Act, extends to persons who were detainees before that section was so amended.

Schedule 2 Amendment of other Acts

(Section 4)

2.1 Children (Criminal Proceedings) Act 1987 No 55

[1] Section 19 Court may direct imprisonment to be served as a juvenile offender

Omit “juvenile” from the note to section 19 (1).

[2] Section 19 (7)

Insert after section 19 (6):

- (7) Nothing in this section, or in any order under this section, limits the operation of section 28 of the *Children (Detention Centres) Act 1987*.

2.2 Crimes (Administration of Sentences) Act 1999 No 93

[1] Section 41A Definitions

Insert “under the age of 18 years” after “a juvenile inmate” in the definition of *section 28 juvenile inmate*.

[2] Section 253 Part subject to Children (Detention Centres) Act 1987

Insert at the end of the section:

- (2) Despite subsection (1), nothing in the *Children (Detention Centres) Act 1987* limits the operation of this Part in relation to a person who is of or above the age of 21 years.

2.3 Freedom of Information Act 1989 No 5

Schedule 1 Exempt documents

Insert after clause 4 (3B):

- (3C) A document is an exempt document if it is a document that has been created by the Drug Intelligence Unit of the Department of Juvenile Justice in the exercise of its functions concerning the collection, analysis or dissemination of intelligence.