



Rights of Children in the Criminal Process (s.20)

Section 20 of the *Human Rights Act 2004* says that:

- (1) An accused child must be segregated from accused adults.
- (2) An accused child must be treated in a way that is appropriate for a person of the child's age who has not been convicted.
- (3) A child must be brought to trial as quickly as possible.
- (4) A convicted child must be treated in a way that is appropriate for a person of the child's age who has been convicted.

Note: Under the Act, all rights may be subject to reasonable limits (section 28). The nature of the right is relevant when considering what is reasonable.

This factsheet is not intended to be a substitute for legal advice.

Scope of the Right

The *Children and Young People Act 2008* (ACT) defines a child as any person under 12 years of age, and a young person as a person who is 12 years old or older, but not yet an adult. However, under the *Legislation Act 2001* (ACT), a child is defined as a person under 18 years of age. Section 20 of the *HR Act* protects all people under 18 years of age. The *Children and Young People Act 2008* in some circumstances permits a young person aged over 18 years of age to continue to be detained in the Bimberin Youth Justice Centre rather than being transferred to adult prison.

Right to be segregated from all detained adults

Any child who is deprived of his or her liberty must be segregated from adults, preferably in a separate juvenile facility. As with adults, accused children on remand must also be segregated from convicted prisoners serving their sentences (section 19(2)).

The law recognises that children, because of their age, are more vulnerable. When housed in adult prisons, or other adult facilities, children's basic safety and well-being may be compromised, along with their ability to reintegrate into society and avoid becoming involved in further criminal activity. That is why there must be separate facilities for children – including distinct, child-centred staff, personnel, policies and practices – to cater for the developmental needs of children.

The only permitted exception to the separation of children from adults is where it is not in the child's best interests. This would only be in exceptional circumstances. For example, the child's best interest may require greater priority for family contact than for separation which may lead to the child being detained with a parent or close to home, even if detention is in a facility shared with adults

Right to be treated in a way that is appropriate for a person of the child's age

This right must be applied, observed and respected throughout the entire process, from the first contact with the child by law enforcement agencies through to the implementation of any sentence.

Article 40(1) of the Convention on the Rights of the Child provides guidance in this area, stating that all

criminal processes involving children must promote their rehabilitation and their ability to take on a constructive role in society.

Right to be brought to trial as quickly as possible

Every child arrested and charged must be brought before a court as quickly as possible. This requirement is similar to that applying to all people (recognised in sections 18(4) and 22(2)(c) of the Charter), but is more onerous, reinforcing the critical nature of timing when a child is kept in detention.

It is not sufficient to cite the absence of proper resources as reason for any delay. A prosecuting authority has a responsibility to ensure that all agencies are adequately supported and that proper consideration is given to the expedition of criminal charges involving children.

The European Court of Human Rights has held that the moment at which the “clock starts running” ‘may precede the trial and could be the “date of arrest”, the date when the person concerned [is] officially notified that he would be prosecuted or the date when preliminary investigations were opened’ (*Eckle v Germany* 5 EHRR 1). ACT Courts have held that ‘the time must begin to run as soon as the Young Person becomes aware that he is the subject of a police investigation’ (*Perovic v CW*).

Examples – Delay in Trial – *Perovic v CW*, ACT Children’s Court, unreported (1 June 2006)

In this case, the Children’s Court held that under section 20(3), a delay of 16 months between the alleged offence and trial for a child was too long, especially for a case that was not very complex. Lack of investigative resources was held to be no excuse, and the Young Person had not been responsible for the delay. The Magistrate ordered a permanent stay of proceedings, ending the prosecution.

Examples of when this right could be relevant in practice

The actions of public authorities can both promote and limit rights. Section 20 could be engaged by activities that:

- Enable children to be detained for any length of time;
- Authorise the holding of children in amenities that have limited facilities or services for the care and safety of children;
- Enable people to undertake personal searches of a detained child;
- Impacts on the environmental design of detention centres or conditions under which children are detained;
- Establish or alter programs in prisons, youth training centres or residential centres;
- Affects the speed at which a child may be brought to trial;
- Create or amend procedures and the law of evidence applicable to children charged with criminal offences, including the investigation and prosecution of offences;
- Amend the law relating to children in criminal proceedings, including bail, adjournments and sentencing.

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