

NARCOTIC OFFENCES AND THE JUVENILE

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Definition of Juvenile

According to the Juvenile justice Act 2003(Act 563), a juvenile is a person under eighteen years who is in conflict with the law (S.1). The section goes further to say that a juvenile shall be dealt with in a manner which is different from an adult.

What is a Narcotic Drug.

For the purposes of this law, that is, the Narcotic Drugs Control, Enforcement and Sanctions Law 1990 (PNDCL 236), narcotics means any of the substances specified in the schedule in the law whether in natural form or synthetic form. In the schedule there is a long list of substances which are considered to be narcotic drugs. In the list are both the scientific and common names of the drug. What are common in this region are Indian hemp (Cannabis), cocaine, heroine and morphine.

What are narcotic offences

1. Importation and exportation (see section 1 of PNDCL 236)
2. Possession(see section 2 of PNDCL 236)
3. Manufacturing and distribution (see section 3 of PNDCL 236)
4. Cultivation of plants for narcotic purposes (see section 4 of PNDCL 236)
5. use of narcotic drugs (see section 5 of PNDCL 236). This includes sniffing, consumption, injection or any form of administration to any person. The minimum punishment is 5 years.
6. supply (see section 6 of PNDCL 236). The minimum punishment is 5 years.

Juveniles could be charged under any of the section specified above but they must be put before the Regional Tribunal or High Court notwithstanding what is provided in section 8(2) of PNDCL 236 which states that a magistrate grade I or a District Tribunal may try and convict a person for an offence under the part but shall be commit the accused to an appropriate court or Public Tribunal for sentence. It is important to emphasise that the lower courts (Circuit, District and Juvenile court) do not have jurisdiction to try offences as grave as narcotics.

DO THE TRIAL COURTS HAVE POWER TO SENTENCE

A juvenile can only be tried for a narcotic offence by the Regional Tribunal or the High Court but neither tribunal or high court has the power to pass sentence on the accused who is a juvenile. Where a juvenile is tried for an offence for which a juvenile court has no jurisdiction to try, as soon as the juvenile is convicted he shall be remitted to the juvenile court for sentence.

DIVERSION

Diversion is one of the methods employed in treatment of juvenile offenders but it is not permitted for a serious offence and since narcotic offence is a serious offence diversion is not permitted (see section 25(2) of Act 653. Diversion has been defined in section 60 to mean the referral of cases of children alleged to have committed offences away from the criminal justice system with or without conditions. It is an alternative to formal prosecution, trial and custodial sentencing.

DETERMINATION OF AGE

In the absence of a birth certificate or baptismal certificate, a certificate signed by a medical officer as to the age of a person below the eighteen years of age shall be evidence of the age before a court without proof of signature unless the court directs otherwise (see section 19(2) of Juvenile Justice Act, 2003 Act 653).

Duration of Detention/Remand

The maximum period remand warrant shall be 7 (seven) days and no remand warrant shall be renewed without appearance of the juvenile at the hearing (see section 23(4)).

The total period of remand of a juvenile shall not exceed three months except in the case of an offence punishable by death where the period shall not exceed 6 months (see section 23(5)).

Duration of Detention

A juvenile shall not be sent to a prison, but where a juvenile is ordered to be sent to a correctional centre the period shall not exceed three months, if he is under 16 years

(b) shall not exceed 6 months if he is above 16 years but under 18 years.

(c) shall not exceed 24 months for a young offender of above the age of 18 years.

(d) shall not exceed 3 years for a serious offence

drug offences are considered serious offences along side offences like murder, rape, defilement, indecent assault involving unlawful harm (section 46(8) of Act 653) robbery and offences related to firearms.

OFFENCES IN RELATION TO PROPERTY

Since the juvenile cannot own property it will not be relevant to discuss this aspect of the law.

RIGHTS OF THE JUVENILE

Please refer to a July 19th 2007 edition of the 'Daily Graphic'. The publication of the photographs of the two teenage girls contravenes section 3 of the Juvenile Justice Act 2003;

The section provided as follows:-

3(1) A Juvenile has the right to privacy during the arrest, the investigation of an offence and at any other stage of the cause or matter.

3(2) A person shall not in the course of arrest, investigation or trial of an offence connected with a juvenile or at any stage of the cause or matter, release any information for publication that may lead to the identification of the juvenile.

3(3) Any person who contravenes subsection (2) commits an offence and is liable in summary conviction to a fine not exceeding 250 penalty units or to a term of imprisonment not exceeding 12 months or to both.

Though we have to respect the right of the juvenile in these circumstances what will be the public reaction if the editor, the cameraman and the reporter are charged and prosecuted under section 3 of the Juvenile Justice Act.

Conclusion

The Juvenile Justice Act contains many innovative provisions, which are meant to ensure the best interest of the child in conflict with the law. These provisions can only be fully complimented if time and resources will be devoted to training and sensitization.