

Importance of child protection clause in cannabis bill

By [Rodney Africa](#), [Adriano Esterhuizen](#), [Daveraj Sauls](#), [Andre Crouse](#) and [Danica Jonker](#)

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On 22 September 2023, the Portfolio Committee on Justice and Correctional Services (the Committee) invited stakeholders and interested persons to make written submissions on the Cannabis for Private Purposes Bill [B19 - 2020] (the Bill). The Bill proposes alternative solutions to address the prohibited use, possession, and cultivation of, or dealing in, cannabis by children (persons younger than 18 years), considering the child's best interest.



Image source: Alexander Grey from [Pexels](#)

It follows on several developments, one of which was a recent Constitutional Court ruling. In *Centre for Child Law v Director of Public Prosecutions, Johannesburg*, the Constitutional Court confirmed, and suspended to 28 February 2024, an order of the High Court declaring that section 4(b) of the Drugs and Drug Trafficking Act 140 of 1992 was inconsistent with the Constitution and invalid to the extent that it criminalises the use and/or possession of cannabis by a child. The suspension allows Parliament to finalise the necessary legislative reform.

The proposal is to insert a "protection of child" clause in the Bill, requiring that in all matters involving a child where the use, possession, cultivation of or dealing in cannabis is at issue, the best interests of the child must prevail in the legal response to any alleged transgression by, or involvement of, the child.

In addition, in all instances where a child is suspected of or alleged to have contravened legislation relating to cannabis, the child must be dealt with outside the criminal justice system, in terms of:

1. the Children's Act 38 of 2005;
2. the Prevention of and Treatment from Substance Abuse Act, 70 of 2008; or
3. any other relevant legislation.



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The proposed "protection of child" clause also requires that a responsible adult (an adult in a position of authority, supervision or care of a child) possess or cultivate cannabis must take reasonable measures to ensure that cannabis is inaccessible to that child.

The Bill and the Working Document which contain the proposed "protection of child" clause (clause 3) can be accessed [here](#).

Stakeholders and interested persons are invited to submit their written submissions by email to Mr V Ramaano at cannabisbill@parliament.gov.za by no later than Friday, 13 October 2023.

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