

NORTHERN TERRITORY OF AUSTRALIA

YOUTH JUSTICE LEGISLATION AMENDMENT ACT 2018

Act No. 12 of 2018

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NORTHERN TERRITORY OF AUSTRALIA

Act No. 12 of 2018

An Act to amend the *Youth Justice Act* and *Youth Justice Regulations*, and for related purposes

[Assented to 23 May 2018]
[Introduced 21 March 2018]

The Legislative Assembly of the Northern Territory enacts as follows:

Part 1 Preliminary matters

1 Short title

This Act may be cited as the *Youth Justice Legislation Amendment Act 2018*.

2 Commencement

This Act commences on the day after the day on which the Administrator's assent to this Act is declared.

Part 2 Amendment of Youth Justice Act

3 Act amended

This Part amends the *Youth Justice Act*.

4 Section 5 amended (Interpretation)

Section 5(1), definition *appropriate*
omit

5 Part 1, Division 3 inserted

After section 9

insert

Division 3 Use of force generally**10 Use of force generally**

- (1) If this Act permits a person to use force on a youth, the person may only use force if:
- (a) all other practicable measures to resolve the situation have been attempted and those measures have failed to resolve the situation; and
 - (b) the person using the force:
 - (i) gives a clear warning of the intended use of force; and
 - (ii) allows a reasonable amount of time for the youth to observe the warning; and
 - (iii) uses no more force than is necessary and reasonable in the circumstances, having regard to the age, gender, physical and mental health, and background of the youth in relation to whom the force is to be used; and
 - (iv) holds a current qualification in physical intervention techniques on youths.
- (2) Subsections (1)(a), (b)(i) and (ii) do not apply if the force is used in an emergency situation.

6 Section 30 amended (Intimate procedure)

Section 30(10), at the end

insert

Note for subsection (10)

See section 10 in relation to the use of force.

7 Section 31 amended (Non-intimate procedure)

Section 31(11), at the end

insert

Note for subsection (11)

See section 10 in relation to the use of force.

8 Section 33 amended (Identifying procedure)

Section 33(9), at the end

insert

Note for subsection (9)

See section 10 in relation to the use of force.

9 Section 140AF amended (Prescribed alcohol/drug tests)

Section 140AF(4), at the end

insert

Note for subsection (4)

See section 10 in relation to the use of force.

10 Section 151AA repealed (Definitions)

Section 151AA

repeal

11 Section 151AB heading replaced

Section 151AB, heading

omit, insert

151AB Meaning of approved restraints**12 Section 152 amended (Powers of superintendent)**

Section 152(1A)

omit

13 Sections 153 and 155 replaced

Sections 153 and 155

repeal, insert

153 Prohibited actions

- (1) The superintendent of a detention centre:
 - (a) must not take an action mentioned in subsection (2); and
 - (b) must take reasonable steps to ensure that a member of the staff of the detention centre does not take an action mentioned in subsection (2).
- (2) Each of the following actions is prohibited in relation to a detainee:
 - (a) the use of force, except:
 - (i) under section 154 or another provision of this Act; and
 - (ii) in accordance with section 10;
 - (b) the use of a restraint, except an approved restraint that is used in accordance with section 155;
 - (c) the use of force or a restraint for the purpose of:
 - (i) maintaining the good order of a detention centre; or
 - (ii) disciplining a detainee;
 - (d) the use of any form of physical, verbal or emotional abuse, including the following:
 - (i) the administering of corporal punishment, that is, any action which inflicts, or is intended to inflict, physical pain or discomfort on the detainee;
 - (ii) any act or omission intended to degrade or humiliate the detainee;
 - (iii) excessive control over the detainee's access to basic human needs, including toilet facilities, food and clean drinking water;
 - (e) the use of any form of psychological pressure intended to intimidate or humiliate the detainee;
 - (f) any kind of unlawful discriminatory treatment.

154 Use of force

- (1) The superintendent of a detention centre may use force, or authorise the use of force if:
- (a) the force is necessary to prevent an imminent risk of a detainee:
 - (i) inflicting self-harm; or
 - (ii) harming another person; or
 - (iii) seriously damaging property; and
 - (b) unless an emergency situation exists – all reasonable behavioural or therapeutic measures to resolve the situation have been attempted and those measures have failed to resolve the situation.

Note for subsection (1)

See section 10 in relation to the use of force.

- (2) If the superintendent uses force, or authorises the use of force, on a detainee, the superintendent must:
- (a) ensure the detainee is given an opportunity to be examined by a medical practitioner or nurse after the use of force; and
 - (b) if the detainee requires medical attention after the use of force – ensure the detainee is examined as soon as practicable by a medical practitioner or nurse; and
 - (c) keep notes of a medical examination under this subsection.

155 Use of restraint devices

- (1) The superintendent of a detention centre may appropriately use an approved restraint on a detainee or authorise the appropriate use of an approved restraint on a detainee if:
- (a) an emergency situation exists; and
 - (b) restraint is necessary to prevent an imminent risk of the detainee:
 - (i) inflicting self-harm; or
 - (ii) harming another person; or
 - (iii) seriously damaging property.

- (2) The superintendent of a detention centre may appropriately use an approved restraint on a detainee or authorise the appropriate use of an approved restraint on a detainee:
- (a) when the detainee is being escorted outside the detention centre; and
 - (b) the superintendent believes on reasonable grounds that the detainee is likely to attempt to escape.

- (3) In this section:

appropriate, in relation to the use of an approved restraint, means using the restraint:

- (a) in the least restrictive or invasive way reasonable in the circumstances; and
- (b) for the minimum amount of time reasonable in the circumstances; and
- (c) in accordance with a determination made by the CEO under the Regulations in relation to the use of approved restraints.

155A Separation of detainees

- (1) A detainee must not be separated from other detainees except in accordance with this section.
- (2) The superintendent of a detention centre may authorise the separation of a detainee from other detainees if any of the following applies:
- (a) the detainee requests the separation and the superintendent is satisfied there is good reason for the separation;
 - (b) the superintendent believes on reasonable grounds that the detainee is suffering from an infectious disease;
 - (c) separation is reasonably necessary for the detainee's protection or the protection of another person or property.
- (3) An authorisation under subsection (2)(c) may be given only if:
- (a) unless an emergency situation exists – all reasonable behavioural or therapeutic measures to resolve the situation have been attempted and those measures have failed to resolve the situation; and
 - (b) no other course of action is reasonably practicable.

- (4) The superintendent must report the separation of a detainee under subsection (2)(c) to the CEO and the Children's Commissioner as soon as reasonably practicable after the separation occurs.
- (5) The superintendent may not authorise the separation of a detainee under subsection (2)(c) for a period exceeding 12 hours without the CEO's approval and if the period exceeds 12 hours the CEO's approval must be given in respect of each successive 12 hour period.
- (6) A detainee may not be separated under subsection (2)(c) for more than 72 consecutive hours.
- (7) As soon as practicable after a detainee is separated under this section, the detainee must be given an explanation of the detainee's rights during the separation, including the rights under section 155B.
- (8) A detainee must be examined by a medical practitioner within a reasonable time either before or after the separation.

155B What happens during separation

If a detainee is separated under section 155A:

- (a) members of the staff of the detention centre must have regular, ongoing and meaningful contact with the detainee for the purpose of:
 - (i) monitoring the physical and mental health and wellbeing of the detainee; and
 - (ii) encouraging the detainee to reintegrate with the other detainees; and
 - (iii) assisting the detainee to deal with the situation which led to the separation; and
- (b) the detainee must be permitted to see any of the following:
 - (i) one or more family members;
 - (ii) a medical practitioner;
 - (iii) a counsellor or psychologist;
 - (iv) a case worker;
 - (v) a legal practitioner;

- (vi) a person nominated by the detainee to provide the detainee with support and positive guidance; and
- (c) the detainee must be given access to any of the following:
 - (i) education and education materials;
 - (ii) appropriate recreation materials, including reading materials;
 - (iii) basic human necessities including toilets, food, clean drinking water, showers and sunlight; and
- (d) if the period of separation exceeds 3 hours – the detainee must be given access to outdoor exercise or recreation for at least 15 minutes of every 3 hours between 8 am and 6 pm.

14 Section 156 amended (Detainee's right to be heard)

- (1) Section 156(1)
 - omit*
 - disciplinary measures
 - insert*
 - actions
- (2) Section 156(1), after "the detainee"
 - insert*
 - under section 154, 155 or 155A

15 Section 159 amended (Sample by buccal swab)

Section 159(4), at the end

insert

Note for subsection (4)(a)

See section 10 in relation to the use of force.

16 Section 160 amended (Detainee may be tested for alcohol or illicit drug)

Section 160(7), at the end

insert

Note for subsection (7)(a)

See section 10 in relation to the use of force.

17 Section 161 replaced

Section 161

repeal, insert

161 Search of detainees

- (1) The superintendent or a member of the staff of a detention centre may direct a detainee to submit to a screening search:
 - (a) when the detainee is admitted to the detention centre; and
 - (b) on the detainee temporarily leaving, and returning to, the detention centre; and
 - (c) on the detainee being transferred from the detention centre to a custodial correctional facility or another detention centre.
- (2) The superintendent of a detention centre may direct a detainee to submit to a screening search or a pat down search if the superintendent believes on reasonable grounds that the detainee may have an article that is not permitted to be in the detainee's possession.
- (3) The superintendent of a detention centre may direct a detainee to submit to a personal search if:
 - (a) the superintendent believes on reasonable grounds that the search is necessary to prevent a risk of harm to the detainee or another person; and
 - (b) the detainee has already submitted to a pat down search under subsection (2).

- (4) Force may not be used to conduct a personal search unless the person conducting the search believes on reasonable grounds that the use of force is necessary to prevent a serious and imminent risk to the safety of the detainee or another person.

Note for subsection (4)

See section 10 in relation to the use of force.

- (5) A search of a detainee must be conducted in accordance with the Regulations.

- (6) In this section:

pat down search means a search conducted by feeling clothing from the outside for objects concealed in or beneath the clothing.

personal search means a search of a person that may include:

- (a) requiring the person to remove the person's clothes; and
- (b) an examination of the person's body (but not of the person's body cavities) and of those clothes.

screening search means a search by equipment that is designed to carry out the search without touching the person.

18 Section 175 amended (Taking of medical sample)

Section 175(3), at the end

insert

Note for subsection (3)(a)

See section 10 in relation to the use of force.

19 Part 17, Division 5 inserted

After section 232

insert

Division 5 Transitional matters for Youth Justice Legislation Amendment Act 2018

233 Definitions

In this Division:

amending Act means the *Youth Justice Legislation Amendment Act 2018*.

commencement means the commencement of Part 2 of the amending Act.

234 Isolated detainees

A detainee who, immediately before the commencement, is isolated from other detainees under section 153(5) as in force immediately before the commencement is, after the commencement, taken to be separated from other detainees under section 155A as in force after the commencement.

235 Restrained detainees

A detainee who, immediately before the commencement, is restrained under section 152(1A) as in force immediately before the commencement is, after the commencement, taken to be restrained under section 155(1) as in force after the commencement.

Part 3 Amendment of Youth Justice Regulations

20 Regulations amended

This Part amends the *Youth Justice Regulations*.

21 Regulation 42 amended (Emergency Management Protocol)

(1) Regulation 42(2)(d)

omit

the detainee to be clothed in rip-proof material and

(2) After regulation 42(2)(d)

insert

(da) if a member of staff considers it necessary to prevent the detainee from inflicting self-harm – the detainee may be clothed in rip-proof material;

(3) After regulation 42(3)

insert

(3A) If an at-risk detainee is accommodated in an observation room under the Emergency Management Protocol, the detainee has the same rights as the detainee would have if the detainee had been separated under section 155A of the Act.

22 Regulations 70 to 73 replaced

Regulations 70 to 73

repeal, insert

72 Separation

- (1) If a detainee is separated under section 155A of the Act:
 - (a) the detainee must be continuously monitored by closed-circuit television or physical observation by a member of staff; and
 - (b) written observations by a member of staff, including the date, time and name of the member of staff, must be recorded at intervals not exceeding 15 minutes; and
 - (c) the Superintendent must reassess the decision to separate the detainee every 2 hours.
- (2) The Superintendent must keep a journal recording the following:
 - (a) the date and time a detainee is separated;
 - (b) the name of the detainee;
 - (c) the reason why the detainee was separated;
 - (d) the behavioural and therapeutic measures attempted under section 155A(3)(a) of the Act;
 - (e) the time the on-call person in charge was notified and that person's name;
 - (f) the observations of a member of staff at intervals not exceeding 15 minutes and the name of the member of staff making the observation;
 - (g) notes of all assessments made under subregulation (1)(c);
 - (h) the date and time of exercise periods and ablutions;
 - (i) the name of any visitor to the detainee and the date and time of the visit;
 - (j) details of any approval by the CEO for separation exceeding 12 hours;
 - (k) the date and time the detainee is released from the separation cell.

73 Searches

- (1) A search of a detainee conducted under section 161 of the Act must be conducted having regard to the detainee's dignity and self-respect.
- (2) A member of staff may only search a detainee in the presence of another member of staff.
- (3) A personal search of a detainee:
 - (a) must be conducted by at least 2 members of staff of the same gender as the detainee; and
 - (b) must not be conducted in the sight or presence of:
 - (i) another detainee; or
 - (ii) a person of the opposite gender; or
 - (iii) more people than is necessary.
- (4) A personal search of a detainee is to be conducted in accordance with the following:
 - (a) the detainee is to remove the clothing from the top half of the detainee's body for inspection, after which the detainee must be permitted to re-dress;
 - (b) after the detainee has re-dressed the detainee is to remove the clothing from the bottom half of the detainee's body for inspection, after which the detainee must be permitted to re-dress.

Part 4 Amendment of Cross-border Justice Regulations**23 Regulations amended**

This Part amends the *Cross-border Justice Regulations*.

24 Regulation 63 repealed (Modification of section 10)

Regulation 63

repeal

25 Regulation 66A inserted

After regulation 66, in Part 3, Division 16

insert

66A Modification of section 140AA (Community youth justice officers)

After section 140AA(1)

insert

(1A) The following persons are also community youth justice officers for this Act:

- (a) an officer of the Department, as defined in the *Young Offenders Act 1993 (SA)*, whose duties include the supervision of offenders in the community under that Act;
- (b) an officer of the Department, as defined in the *Young Offenders Act 1994 (WA)*, whose duties include the supervision of offenders in the community under that Act.

Part 5 Repeal of Act

26 Repeal of Act

This Act is repealed on the day after it commences.